

No. 15424

United States
Court of Appeals
for the Ninth Circuit

FOX WEST COAST THEATRES CORPORA-
TION, TWENTIETH CENTURY-FOX
FILM CORPORATION and LOEW'S, IN-
CORPORATED, Appellants,

VS.

PARADISE THEATRE BUILDING CORPORA-
TION, Appellee.

PARADISE THEATRE BUILDING CORPORA-
TION, Appellant,

VS.

FOX WEST COAST THEATRES CORPORA-
TION, TWENTIETH CENTURY-FOX
FILM CORPORATION and LOEW'S, IN-
CORPORATED, Appellees.

Transcript of Record

In Six Volumes

VOLUME III.

(Pages 953 to 1424, inclusive)

Appeals from the United States District Court for the
Southern District of California,
Central Division

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(Deposition of Seymour Simon.)

Q. Are you also admitted in any jurisdictions?

A. I have been admitted to practice before [1196] the United States District Courts in jurisdictions other than the United States District Court sitting in the State of Illinois.

Q. Is that in connection with particular cases in other jurisdictions?

A. In some instances, it has been in connection with particular cases, and some instances, it has been general admission.

Q. Are you admitted to practice in the United States District Court for the Southern District of California?

A. No. I have been admitted to practice there in specific matters.

Q. Have you at any time represented the plaintiff in this case, Paradise Theatre Building Corporation? A. Yes.

Q. Will you state during what period of time?

A. I first commenced to represent them in the early part of 1950; I continued to represent them up to the present time.

Q. Now in the course of your representations of that company, I take it that you had from time to time occasion to carry on negotiations on behalf of that company with various distributors of motion pictures, is that correct?

A. I have participated as attorney for [1197] that company in conversations with various agents,

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employees or attorneys of motion picture distributors.

Q. I would like to state for the record at this time that in order to facilitate the taking of this deposition, to cut down the time that will be consumed in it, we have a number of documents that we wish to use in connection with the deposition, which have been marked for identification in connection with other depositions in the case; and rather than assign new exhibit numbers to them in connection with this particular deposition, my thought would be to use the numbers which they already bear for purposes of identification.

A. If you follow the number previously assigned, that would be perfectly satisfactory.

Mr. Johnston: Do you make that statement in your capacity as attorney for the plaintiff rather than as a witness?

The Witness: No. I make that in my capacity as a witness.

Mr. Westbrook: We have been following that procedure in connection with other depositions.

Mr. Johnston: I assume that procedure will be satisfactory with other counsel of record."

Mr. Corinblit: Speaking as representing [1198] the plaintiff in this case, we would like to move now to page 15. We will agree to stipulate as to the matter of the documents in accordance with what is in the deposition, but since the documents

(Deposition of Seymour Simon.)

themselves will not be presented to the jury, I don't think there is any occasion to read that section.

We will begin now at page 15.

(The reading of the deposition was resumed as follows.)

“Q. Now it is correct, is it not, Mr. Simon, that subsequent to the date April 17, 1950, you and Mr. Alex Schreiber made a trip to New York?

A. I made a trip to New York. He met me there.

Q. Do you recall the dates when you were in New York?

A. It was in the latter part of April. I don't recall the precise dates. I would think I have records which would show the dates I was in New York. [1199]

Q. Actually, we fixed the dates as, I think, April 25th and three or four days following.

Would that be in general in accordance with your recollection?

A. It was in the latter part of the month. My records might show a day or two sooner or later.

Q. Do you recall approximately how long you were there at that time?

A. I believe I got there before Mr. Schreiber got there, and I might have stayed a day or two beyond the time he was there. But it's my recollection that he was there with me three or four days.

Q. Now prior to the time of your trip to New York in April, 1950, had you had any conversations

(Deposition of Seymour Simon.)

with any representative of of any motion picture distributor with respect to the Paradise Theatre or the clearance or availability for that theatre?

A. The only conversations I might have had would have been long distance telephone calls or calls in New York arranging for appointments to see various distributors and representatives while I was to be in New York.

Q. I take it from what you say that in such telephone calls you would not have actually had any discussion with respect to the theatre, but simply of set-up of an appointment? [1200] A. Yes.

Q. For a personal interview?

A. That is correct.

Q. So that the conversations that you did have in the latter part of April, 1950, are the first ones where you actually discussed the problem of availability for the theatre, is that correct?

A. That is correct.

Q. Now turning your attention to Paramount Film Distributing Corporation, do you recall having a conversation with certain representatives of that company in New York in the latter part of April, 1950? A. I do.

Q. It is correct, is it not, that you first talked to Mr. Louis Phillips about the Paradise Theatre?

A. Before talking to him——

Q. I believe in the latter part of the conversation Mr. Austin Keogh was also present.

A. That is not so.

(Deposition of Seymour Simon.)

Q. May I have your recollection in that regard?

A. My recollection is that Mr. Schreiber and I had an appointment with Mr. Austin Keogh, and we went to his office which is on the south end of the floor where Paramount lawyers have their offices, as you come off the elevator, entering, the aisle runs north and south, or the [1201] corridor runs south and you turn to the right.

At that time we went into Mr. Keogh's office, and we started talking to Mr. Keogh about this situation, and he said that he wasn't as familiar with the situation as Mr. Phillips was, and he asked if he would have any objection to his asking Mr. Phillips to step in.

And I think I recall telling him or calling to his attention that I had just finished a couple of hard fought cases in Chicago against Paramount and Balaban & Katz Corporation, and I had no objection to Mr. Phillips coming in, except that I hoped that we wouldn't refight the battles that we had been fighting in those cases in Chicago.

Mr. Keogh assured me that that would not be the case.

And he made a call for Mr. Phillips, and then Mr. Phillips joined the meeting.

Q. Before Mr. Phillips joined the meeting, had anything been said about the Paradise Theatre?

A. Yes. My recollection is that I had told Mr. Keogh that Mr. Schreiber and I were there to see him about getting pictures for the Paradise Thea-

(Deposition of Seymour Simon.)

tre, and that we wanted Paramount pictures to play on a nonexclusive first-run showing in Los Angeles, that is, a showing which would not prevent simultaneous exhibition in a number of other theatres.

Q. What is known in the trade as a day [1202] and date exhibition first-run in Los Angeles, is that correct?

A. Well, I don't think I used those words.

Mr. Keogh said that Paramount had a franchise agreement with Fanchon & Marco, who operated the Paramount Theatre Downtown and the Paramount Theatre in Hollywood, and that there was a difference of opinion between the licensee and Paramount regarding the legality of that agreement.

And at that time the question of its legality was before a United States District Court, and therefore he felt that the posture of the lawsuit then had some bearing on our discussions and on their willingness to sell first-run pictures to the Paradise Theatre.

It was then that he pointed out that Mr. Phillips was more familiar with that litigation than he was, and suggested that Mr. Phillips join the meeting.

Q. Is that substantially all you recollect being said with respect to the Paradise before Mr. Phillips joined the conversation?

A. I believe that I told Mr. Keogh that I understood that Paramount's position in the lawsuit

(Deposition of Seymour Simon.)

was that the franchise was illegal, and that if it was illegal, from the standpoint of my client, I found no justification for Paramount adhering to the franchise.

I also told him that I felt the area of [1203] clearance of the franchise given the licensee was entirely too broad, and for that reason illegal, and that I didn't see how they could justify continuing to give that clearance, even though they were in litigation with their licensee at the time.

And he said that he believed that their position in the lawsuit was that the clearance feature of the franchise was unreasonably broad, and therefore illegal.

I said that inasmuch as they agreed with my view, that the clearance provisions were illegal, if they continued to adhere to those clearance arrangements provided for by the franchise during the period my client was attempting to obtain Paramount pictures, I thought that my client would have a claim for damages under the Anti-Trust laws.

I also told him that I understood that Paramount was not obligated to give every single one of its pictures to the licensee under that franchise, but could exclude pictures, a certain number of pictures in each year from the operation of the franchise, and that if Paramount thought the franchise was illegal and was maintaining that in a lawsuit, they certainly owed a duty to my client to shoot as many pictures as they possibly could from that

(Deposition of Seymour Simon.)

franchise and offer them to my client for first-run showing.

I believe that it was about at that point that Mr. Keogh said that I was getting into details of the franchise and their position in the lawsuit and it was Mr. Phillips [1204] who knew more about that than he did.

Mr. Phillips was then invited into the meeting.

Q. Before Mr. Phillips came in, did Mr. Keogh say anything about the basis upon which he thought Paramount was advancing the contention that the clearance provisions of the franchise were unreasonable? A. I don't recall.

Q. Do you recall that he said that the basis of Paramount's position in that regard was that the franchise agreement carried forward the clearance of the 1938-39 motion picture season from year to year without modification by reason of the building of new theatres or the changes that might have occurred in the City of Los Angeles over the years?

A. I believe what he said was that—I don't recall his saying the 1938-39 motion picture season. But I believe what he said was the clearance that was imposed under the franchise was the clearance that had been adopted many years before, and since that time Los Angeles had grown tremendously and spread out in various directions; and because of the problems of transportation, Paramount felt that the reasonable way to market pictures there was to have a series of multiple first-run showings

(Deposition of Seymour Simon.)

rather than just confining the first-run to downtown Los Angeles and Hollywood; and that Paramount by the franchise was prevented from doing that; and he thought that the area of clearance, in [1205] view of the changes that had taken place, should not be as large as it was.

Q. Did he tell you that the area of clearance covered by the franchise was the entire county of Los Angeles with the exception of Pomona?

A. I don't recall that.

Q. You don't recall his discussing the extent of the area of clearance under the franchise?

A. I don't recall that. He may have. I don't recall it.

Q. Is that all you recall as having been said by you or Mr. Schreiber or Mr. Keogh before Mr. Phillips entered the meeting?

A. I believe Mr. Schreiber told Mr. Keogh about what a fine theatre he was going to have, about its general location, its size.

Q. Anything in addition to that that was said before Mr. Phillips came in?

A. Not that I can presently recall.

Q. Up to that point, I take it that just you and Mr. Keogh and Mr. Schreiber were present, is that correct?

A. That is correct.

Q. I will show you now a photostatic copy of a map, which bears in the lower left-hand corner the legend, 'Furnished by Alex Schreiber, 4/26/50, in New York,' which is [1206] Defendant's Ex-

(Deposition of Seymour Simon.)

hibit E-7 for identification, and ask you if you recall that Mr. Schreiber had several photostatic copies identical in form of the one which I hand you with him, that he had one such photostatic copy with him at the meeting with Mr. Keogh.

A. Well, I recall his having a document that looked something like this, looked very similar to this.

As a matter of fact, whether this is the exact document or not, I do not know."

Mr. Mitchell: Should not that document be here for our use?

Mr. Corinblit: I beg your pardon.

Mr. Mitchell: You and Mr. Simon are testifying about a document. I think we should have the document.

Mr. Corinblit: Very well.

Mr. Mitchell: Who is going to introduce this into evidence? It is your map.

Mr. Corinblit: Speaking as an attorney for plaintiff in this case I will stipulate you may at this time introduce the map.

Mr. Mitchell: I don't care who introduces it, but since you are going to testify about it I think maybe we had better have it in evidence and let the jury see it.

Mr. Corinblit: Yes. [1207]

Mr. Mitchell: Do you want us to offer it as our exhibit?

Mr. Corinblit: Yes.

(Deposition of Seymour Simon.)

The Court: You may proceed.

The Clerk: Paramount's Exhibit B-4 in evidence.

(The document referred to was received in evidence and marked as Paramount's Exhibit B-4.)

Mr. Mitchell: May the map be shown to the jury?

The Court: Yes, it may be passed around to the jury but continue with the reading of the deposition.

(The reading of the deposition was resumed by counsel as follows:)

"Q. Do you recall anything being said about that document before Mr. Phillips entered the meeting?

A. Well, there was something said about this document. Whether it was said before or after Mr. Phillips entered the meeting, I do not know.

Q. Do you recall also that Mr. Schreiber had with him a schedule showing the competitors featuring motion pictures in the area in and surrounding Inglewood, California, which schedule also included some other memoranda with respect to names of theatres, their address, sets, and so on?

A. Is this a schedule of the showing of first-run pictures?

Q. There was a schedule, I believe, showing the particular [1208] pictures of distributors other than Twentieth Century-Fox in the Loyola Theatre.

A. Well, I recall the latter document. I recall Mr. Schreiber had that with him. And I recall he

(Deposition of Seymour Simon.)

had other material with him. I don't recall the exact nature of that material, no.

Q. Do you recall whether there was any conversation about that material before Mr. Phillips entered the meeting?

A. I have no recollection of that.

Q. Now going on with the course of the meeting, can you tell me what was said by you and Mr. Schreiber and Mr. Keogh and Mr. Phillips after Mr. Phillips came into the meeting?

A. Mr. Phillips said that Paramount's position would be that pending the determination of the lawsuit, which was then in existence, Paramount would continue to license its pictures to the Paramount Theatre downtown in Los Angeles and Paramount Theatre in Hollywood.

He said that he was hopeful that the franchise would be terminated by the action of the Court, because Paramount desired to set up, or at least—I won't say he said they desired to set up. They were giving serious consideration to setting up a series of multiple first-runs where maybe eight, ten theatres in the Los Angeles area would be permitted to show a picture simultaneously on its first showing in Los Angeles, and that if such a system was established, [1210] the Westchester area would certainly qualify as a first-run area."

The Court: Just a minute. I think possibly I should advise the jury, I believe I am correct, that the lawsuit referred to in this connection is the Partmar case which has heretofore been referred to and was tried in this court.

(Deposition of Seymour Simon.)

That is correct, isn't it?

Mr. Corinblit: That is correct, sir.

(The reading of the deposition was resumed by counsel, as follows:)

"Q. In that connection, did he say Westchester alone, or Westchester, Inglewood, and surrounding communities?

A. I think he said Westchester.

However, he said that Paramount couldn't do anything in that direction until such time as they found out that the lawsuit, what their legal position was.

He then raised the question of how Paramount should offer pictures to the Paradise Theatre, in view of the fact that they were unable to, at least, for the time being, offer the Paradise first-run pictures.

I think before we got to that, I pointed out to him, as I had to Mr. Keogh, that as I understood the franchise, there were a number of pictures each year which Paramount [1211] was not required to offer to those Paramount Theatres, and that I saw no reason why this play of multiple first runs that he said Paramount was interested in establishing once they had their position under the franchise clarified, should not be established immediately with respect to those pictures that didn't have to go to Fanchon & Marco under the franchise.

And his answer to that was that they didn't want to—as I recall it—they didn't want to set up any new system of distributing until they were free to license all of their pictures in that fashion—and

(Deposition of Seymour Simon.)

also, he said that in his opinion there was question as to whether Paramount was safe legally in taking any pictures away from the Fanchon & Marco theatres.

I think at that point I pointed out to him that the Loyola Theatre had, in fact, previously shown some Paramount pictures on first-run showing in Los Angeles simultaneously with other theatres in the Los Angeles area, and I asked him how it was that the Loyola was able to get those pictures if all Paramount pictures were supposed to go to the Paramount Downtown theatre and Paramount Hollywood.

I believe his answer was that those were pictures that Fanchon & Marco had chosen not to exhibit under their franchise.

Q. Do you recall there were only two such pictures? [1212]

A. There weren't a large number. I was thinking, as I tried to think back, that there were four or five. There may have been two.

When I say I was thinking, I was thinking just now as I was thinking back to six years ago, that there were probably four or five, and if you had asked me or told me how many, I would have said I thought about four or five. I am not going to argue. There may have been just two.

Then he started talking about how was Paramount going to offer pictures to the Paradise Theatre. And I said I thought there would have to be

(Deposition of Seymour Simon.)

biddings set up between Paradise and the La Tijera located in Inglewood.

Q. Did he say he thought that?

A. I don't recall his saying that he thought that. I told him that it was our position that the Paradise could play simultaneously with any of those theatres in Inglewood without affecting them in any way, and I didn't see why they didn't sell the Paradise a simultaneously showing with the theatres in Inglewood.

And I pointed out to him that there were so many theatres in Inglewood, all of them vying for product, or at least I thought they were vying for product, that there certainly would be one theatre in there that was willing to play pictures along with the Paradise, particularly if its competitors said, 'We won't play those pictures that the Paradise [1213] plays simultaneously.'

If that situation obtained, then one of those theatres, in order to get a jump on its competitor, would come rushing forward and say, 'We will be glad to do it.'

And I said, particularly on their bigger pictures, that everyone was interested in playing, I just could not see how if they offered the picture to the Paradise, every theatre in Inglewood was going to say, 'We don't want to play that picture because the Paradise is going to be able to play it simultaneously with us.'

And then I recall Mr. Phillips said that the trouble with my thinking about the motion picture busi-

(Deposition of Seymour Simon.)

ness was that I had the idea that they could set up a different licensing procedure and a different clearance pattern for every picture, but actually they had to release all pictures in the same manner with the same clearance because exhibitors insisted that they do that.

I told him that I got my ideas as to the fluidity with which distributors should license their pictures from ideas that I had read he, himself, had promulgated.

One of them was a general letter of instructions that the general sales manager of Paramount had sent out to all his branches back in 1947, '48 or '49. It might have been as far back as '46.

And I told Mr. Phillips that I assumed he had had a [1214] hand in preparing that, and that document said that on different pictures he would assume that if the proper factors were considered in granting clearance, the different length of clearance would be granted on different pictures, and also the area of clearance would be different on different pictures.

And then I reminded Mr. Phillips that in a memorandum he had written he had gone on to announce the same sort of approach toward the determination of what was the proper clearance, namely, it should vary from picture to picture, dependent upon the economic conditions surrounding each picture and the degree of competition for the picture.

Now Mr. Phillips said that regardless of all that, things just didn't work out that way, and even if a

(Deposition of Seymour Simon.)

distributor tried to vary clearance both from the standpoint of length of clearance and area of clearance from picture to picture, the exhibitors wouldn't stand for it and they would insist that each distributor grant uniform clearance as to each of the pictures and ultimately that all the distributors grant uniform clearance.

I told Mr. Phillips that that wasn't my experience at all, and that I thought that Paramount could steal a march on its competitors in dealing with the Paradise by offering its pictures to the Paradise to play simultaneously with theatres in Inglewood. [1215]

This would then make the Paramount pictures more attractive to the Paradise, Paradise would probably buy Paramount pictures in preference to pictures of other companies, and at the same time Paramount would not be precluded from selling its pictures to other theatres for simultaneous showing, and then I was sure they would find plenty of other theatres willing to buy the pictures rather than letting them go by default to competitors.

Q. Do you recall anything else being said at that meeting?

A. Well, I do recall as we were breaking up Mr. Schreiber offered to give Mr. Phillips a copy of this map that he had. Either it was in the form of Exhibit E-y, or substantially similar to that.

Mr. Phillips said he would be very happy to have that, and I think there was some question about where a copy of it was to be made.

(Deposition of Seymour Simon.)

I think Mr. Schreiber said he would take it out to a photostater or have a copy made and furnish it to Mr. Phillips.

At the end, Mr. Phillips and Mr. Keogh said that they would have to look into the matter further as to how they were going to offer pictures to the Paradise and let me know.

Q. Do you recall at any time in the conversation Mr. [1216] Phillips saying that the problem with respect to the Inglewood and Westchester area was not so much of clearance between theatres, but was one relating to a number of availabilities when day and date availabilities were going to be offered by Paramount in that area.

A. I don't understand your question. Day and date availabilities? On what ground?

Q. On the first Inglewood showing, not only Los Angeles, as a 7-day availability, that is, 7 days after Los Angeles first run.

A. Your question is what?

Q. Do you recall Mr. Phillips saying that the problem was not so much one of clearance in the Inglewood-Westchester area as it was the number of day and date showings on the 7 day availability that were going to be offered by Paramount in the Inglewood and Westchester areas.

A. Were going to be offered? In what connection?

Q. To the exhibitors first for exhibition.

A. Are there any other ways you can refresh

(Deposition of Seymour Simon.)

my recollection as to the subject matter you are attempting to lead into?

Q. Well, you recall Mr. Phillips saying that the problem was one of priority of run rather than clearance?

A. Well, that's what we were talking about, priority of run. [1217]

Q. Rather than——

A. It wasn't with respect to first run. I have been using the word clearance, but in the sense that the clearance preventing the simultaneous exhibition with the Paramount Hollywood and Paramount Downtown by any other theatre.

You have me a little confused, because apparently you are using priority of run in a different sense than clearance.

Are you using clearance to mean the length of time that elapses between runs?

Q. That's my understanding of the word clearance, yes.

A. Well, I haven't used clearance in that sense.

Q. You have used clearance to mean priority of run?

A. I have used it to mean priority of run, and also the length of time elapsing between successive runs.

Certainly, when I was talking about the clearance under that first run franchise, I was talking about an agreement which precluded simultaneous first run showing in a large area. I wasn't talking about a situation where perhaps the Paradise was held

(Deposition of Seymour Simon.)

back to playing 14 days after first run when we thought it should be playing ten or nine or eight days after first run.

Q. Do you recall anything being said in your conversation about the fact that Paramount was already offering two [1218] runs on availability of seven days after Los Angeles first run closing in the Inglewood-Westchester area so that it was entirely possible under the Paramount distribution policy at the time for the Paradise to play day and date with theatres in Inglewood?

A. I believe there was some mention made of the fact that theatres in the Inglewood area under the Paramount selling procedure which were much closer together and much more competitive to each other than the Paradise was to any of them, would be able under the selling procedure which Paramount was either following then or which Mr. Phillips suggested they might follow, it would be possible for those theatres to play day and date, and yet the Paradise Theatre, which was much less competitive to either theatre than those two were to each other, would not be permitted to play simultaneously with them.

And I said that I thought that was unfair.

Now, I don't recall whether Mr. Phillips said that Paramount was already selling that way or whether he said that they were thinking of selling that way, and asked what we thought about it. [1219]

Q. Now you have said that the Paradise would not be permitted to play day and date.

(Deposition of Seymour Simon.)

Do you recall that actually being said at the time of this conversation in New York?

A. I don't recall the exact words that either Mr. Phillips or I used, of course. That was more than six years ago. I have given you my best present recollection of what was said.

Q. I understand that.

Now have you told us everything that you recall at the meeting being said at the meeting with Mr. Phillips and Mr. Keogh on April of 1950?

A. There was one other theory of motion picture distribution that Mr. Phillips raised and took issue with me on. I have covered one when I talked about this idea of clearance, both as to time and area, from picture to picture.

There was one other theory that he raised, and then proceeded to tell me I had been wrong about when I had been arguing here in Chicago. But I don't recall what it was. We got into a conversation about that.

Q. You don't recall that as having any particular bearing on Paradise?

A. I think he tried to bring it into the Paradise [1220] situation, but I really felt that we are doing what I told Mr. Keogh I thought we would be doing, refighting some battles in Chicago.

Q. You don't recall anything more about it than that at the present time? A. No.

Q. Now I take it you have stated your present recollection of the substance of your conversation with Mr. Phillips and Mr. Keogh.

(Deposition of Seymour Simon.)

A. Yes, I have.

Q. Did you at the time of this meeting or at any time thereafter prepare any written memorandum of the conversation that you had?

A. I did not.

Mr. Johnston: Do you know whether Mr. Schreiber did?

The Witness: I do not, no.

Mr. Johnston: Mr. Simon, how long was this meeting with Mr. Phillips and Mr. Keogh?

The Witness: Oh, I judge we were there from an hour to an hour and a half. We were proceeding at this thing fairly leisurely there.

Mr. Keogh had a nice big comfortable office, soft chairs. And except when we get to refighting a few battles in Chicago, every one of us was quite relaxed. [1221]

Mr. Johnston: Was that the first distributor you called upon with Mr. Schreiber when you made the visit to New York in the latter part of April?

The Witness: I do not recall.

Mr. Johnston: Do you recall the sequence of your visits?

The Witness: No, I do not.

Mr. Westbrook: Q. There was one other question I did want to ask you about that conversation before we leave it.

Do you recall Mr. Phillips saying that Paramount and Fanchon & Marco had entered into what was nominated a stand-by agreement, or two stand-by agreements with respect to the franchise situation,

(Deposition of Seymour Simon.)

pending the outcome of the litigation between Paramount and Fanchon & Marco?

A. I do not recall.

Q. Do you recall Mr. Phillips saying that one of the reasons why Paramount had decided not to depart from the policy of licensee pictures to Paramount Downtown and Paramount Hollywood pending the determination of the litigation with Fanchon & Marco, was because of the very substantial damages with which Paramount would be faced if their position in the lawsuit with Fanchon & Marco were not sustained? [1222]

A. Yes, I recall that being said by either Mr. Keogh or Mr. Phillips. I do not remember which.

And I think I replied to that that on the other hand, if their position were sustained, they might be subjected to heavy damages on the part of independent exhibitors who were being deprived of the opportunity of playing first-run, while they were adhering to the franchise. And even if their position were not sustained in their litigation with Fanchon & Marco, they might subject themselves to that type of liability under the Anti-Trust Laws.

And one of them said that they appreciated that, but that was the decision that they, as lawyers for the company and the people who were administering the company, had to make, which of a series of damage suits they would prefer to face.

And I told them that I agreed with that, that that was a decision they had to make. I couldn't make it for them.

(Deposition of Seymour Simon.)

Q. Now with regard to the subject that you mentioned of there being certain pictures that were not covered by the franchise, do you recall either Mr. Phillips or Mr. Keogh saying that the only pictures that were not covered by the franchise were those exhibitions which were pre-released or road show exhibitions? [1223]

A. Yes, I recall that.

Q. And that they were limited in number to not more than four a year?

A. Well, I recall the number four. Now whether it was that pre-release or road show engagements were limited to four, or whether in addition to pre-release and road show engagements four pictures could be excluded from the franchise, even though they weren't pre-release or road show engagements, I don't recall.

Q. Do you recall either Mr. Phillips or Mr. Keogh saying with respect to those pictures which Paramount elected to treat on a pre-release or road show basis, that they preferred such exhibition to occur in the Hollywood Boulevard area or in downtown Los Angeles?

A. I don't recall that."

Mr. Corinblit: Speaking as attorney for the plaintiff in this case, I would like to omit the portion beginning at the bottom of page 40 and running over to page 42, beginning with the question: "Now you recall that the Paradise Theatre opened in August, 1950?"

Beginning there, Mr. Herscher.

(Deposition of Seymour Simon.)

(The reading of the deposition was resumed as follows:)

“Q. Now you recall that the Paradise Theatre opened in August, 1950? [1224]

A. I don't recall when it opened.

Q. Well, are you able to state whether or not during the period following your meeting with Mr. Phillips and Mr. Keogh in New York, and continuing until the opening of the Paradise Theatre, you, personally, had any other conversation with any representative of Paramount Film Distributing Corporation or Paramount Pictures Corporation?

A. I don't recall any.

Q. Now directing your attention to Loew's, Incorporated, when you were in New York in April of 1950, did you have any conversation with any representative of that company about the Paradise Theatre?

A. Yes.

Q. Will you state with whom?

A. Benjamin Melniker and J. Eisenberg.

Q. Were they both present together throughout your meeting?

A. I am not sure.

Q. I take it that you were present and Mr. Alex Schreiber was present?

A. Yes.

Q. Anyone else?

A. Not that I recall.

Q. Do you recall where the meeting occurred?

A. My recollection is that it occurred in the Loew's Building at 1540 Broadway in New York City.

Q. In either Mr. Melniker's office or Mr. Eisenberg's office?

(Deposition of Seymour Simon.)

A. I believe it was in Mr. Melniker's office.

Q. Will you tell me as nearly as you can recall what was said by you, Mr. Schreiber and Mr. Melniker and Mr. Eisenberg in that meeting?

A. I said that we wanted to play their pictures on the first-run showing in Los Angeles.

Mr. Melniker said that was out of the question because they licensed their pictures to only two theatres for first-run showing; one of them was in downtown Los Angeles, I think it was the State Theatre, and the other one was in Hollywood, I think it was the Egyptian Theatre, and those are the only first-runs that they would license, nothing could be done on our request for first-run.

Q. In that connection, do you recall either knowing at that time or recalling a statement at that meeting, that, in fact, Loew's licensed some of its pictures during the period just prior to the time of your meeting to one or two other theatres in the Hollywood Boulevard area and one or two other theatres in the downtown Los Angeles area, but that in any event it [1226] was Loew's policy to confine the first run exhibition of its pictures to those two areas?

A. Well, I said that I understood that previously they had licensed at least three first-run showings, that they had licensed two pictures to a theatre in either Beverly Hills area or Wilshire area, and that indicated that Loew's didn't confine its showing to only two theatres.

Mr. Melniker said that they had done that, but

(Deposition of Seymour Simon.)

they had changed, and now they were confining their showing to two theatres.

Q. One in Hollywood and one in downtown Los Angeles?

A. That is correct. And I said, well, I didn't see any reason for that. What was the reason for it?

He said that was a company decision and they would not sell more than two showings.

I think I might have referred to a few Loew's pictures that, in previous times, had been exhibited at the Loyola Theatre too.

I believe there had been one or two exhibited at the Loyola Theatre on the first-run showing, although I am not sure of that.

Q. Do you recall Mr. Melniker saying that that was years ago?

A. Yes. He said that was years ago, but I told [1227] him it wasn't so long ago. It was in 1946 or 1947 that that had happened. I didn't think that was so long ago.

Q. This was in 1950? A. Yes.

Q. What else was said at that meeting, that you recall?

A. Well, then he said, 'Let's get down to business here and not waste time. We can't sell you first-runs, so don't waste any more time talking about that. Now we will talk to you about how we can sell. It's obvious you are going to be in competition with Inglewood, and you ought to compete against the theatres in Inglewood.' I think he said including the Academy Theatre and the Fifth Ave-

(Deposition of Seymour Simon.)

nue. I believe that went as far as the South Side Theatre for a 7-day showing and——

Q. Let me interrupt. Is your recollection firm on the South Side Theatre?

A. It's not firm on that, but it's firm on the Academy.

Q. Go ahead. Excuse me.

A. And I told him that I thought that was ridiculous, that those theatres were just too far away to be competitive, and that the Paradise, in my opinion and [1228] Mr. Schreiber's opinion, could have simultaneous showings with those other theatres without Paradise being affected and without the other theatres being affected.

I told him that I thought the best way to find out what the best way of licensing the product was was to offer a number of pictures to the Paradise for simultaneous showing with theatres in Inglewood, and in that way he would find out how that method of licensing did affect the theatres in Inglewood, if it affected them at all.

Q. What did he say in response to that?

A. Well, he said they would look into it and let me know.

Q. Is that all you recall about that meeting?

A. That's about all I recall."

Mr. Corinblit: Now speaking as attorney for the Paradise Theatre, the reference to documents concerning which we will be able to stipulate, I am sure, we will omit them. Going over now to page 48, beginning with the question: "Now between the

(Deposition of Seymour Simon.)

time of your conversation with Mr. Melniker and Mr. Eisenberg—" if there is no objection.

Mr. Herscher: Is there any objection?

Mr. Mitchell: No, we are not objecting. [1229]

(The reading of the deposition was resumed as follows):

"Q. Now between the time of your conversation with Mr. Melniker and Mr. Eisenberg in New York in the latter part of April, 1950, and the opening of the Paradise Theatre, do you recall having any other conversations with any representative of Loew's, Incorporated about the Paradise?

A. Yes. I believe that I had some long distance telephone conversations with Mr. Melniker.

Q. Are you able to fix the time of those conversations? A. No, I am not.

Q. That would be your recollection, it was in the period that I indicated? A. Yes.

Q. Do you recall the first of those conversations?

A. I don't recall how many there were.

Q. You are not able to separate one from the other, is that correct?

A. No, I am not able to do that.

Q. Do you recall the substance of the conversations? A. I don't recall that either.

Q. Do you recall whether any of them related to the pictures 'Father of the Bride' and 'Asphalt Jungle?' A. I don't recall. [1230]

Q. Do you recall whether your conversations related to 'Annie Get Your Gun'?

A. I don't recall.

(Deposition of Seymour Simon.)

Q. Apart from those telephone conversations, you don't recall having had any other conversations with any representative of Loew's, Incorporated, during the period from the end of April of 1950 until the opening of the theatre? A. No.

Q. Referring now to Warner Bros., did you, when you were with Mr. Schreiber in New York in the latter part of April, 1950, have a conversation with a representative or representatives of that company about the Paradise? A. Yes.

Q. Would you state with whom?

A. Howard Levinson.

Q. I take it you and Mr. Schreiber were present, and Mr. Levinson, and no one else, is that correct?

A. Yes.

Q. I take it the conversation occurred in Mr. Levinson's office? A. That is correct.

Q. Will you tell me as nearly as you can recall what was said by each of the persons?

The Witness: Do you think we should break off now? [1231]

Mr. Westbrook: Yes. This would be a good time."

"Q. Mr. Simon, would you tell me whether or not you recall having made any memorandum of your conversation with Mr. Eisenberg and Mr. Melnick in April, 1950? A. I did not.

Q. So far as you know, no one else did?

A. I have no knowledge as to whether Mr. Melniker and Mr. Eisenberg did, and I have no knowledge as to whether Mr. Schreiber did.

(Deposition of Seymour Simon.)

Q. Now Thursday we had just commenced talking about your visit to Mr. Levinson of Warner Brothers in New York in April of 1950.

As I recall, your testimony was that you had discussed the Paradise Theatre with him at that time, is that correct? A. Yes.

Q. And I take it that was in Mr. Levinson's office? A. Yes.

Q. And the persons present were you, Mr. Schreiber and Mr. Levinson. A. That is right.

Q. Now will you tell me as nearly as you recall what was said by you, Mr. Schreiber and Mr. Levinson [1232] at that time?

A. I told Mr. Levinson about this Paradise Theatre, which was being built, and which would soon be ready for opening.

And Mr. Schreiber, I believe, embellished my description by telling Mr. Levinson what a beautiful and finely appointed theatre it would be.

I then said that the theatre—I said that Mr. Schreiber wanted to play at the theatre first-run pictures, and he would like to be able to license Warner Pictures on a basis which would not prevent simultaneous showing of the pictures in other theatres.

Mr. Levinson said he believed that that would be impossible, because Warner Brothers licensed their first-run pictures to their own theatres in Los Angeles.

Q. To their three Warner Brothers Theatres,

(Deposition of Seymour Simon.)

Warner Downtown, Warner Hollywood and Warner Wilton?

A. I don't remember the specific names of the theatres. He might have. I do recall that he pointed out that they have their own theatres and they would not be willing to license first-run pictures to any other theatres so long as they could play them in their own theatres, and so long as that situation [1233] prevailed, he believed it would be the desire of his company to confine the first-run exhibition in Los Angeles of Warner pictures to theatres owned by the same company as was producing and distributing the pictures.

I think we then asked him about playing the pictures on the availability of seven days after first-run without bidding against theatres to the east of the Paradise, that is, theatres in Inglewood, and my best recollection is that he said he would look into it and let us know.

I don't recall his having given us any definite answer.

Q. Do you recall his saying that he didn't have anything to do with that phase of the problem, and that the thing to do was to talk to Warner's representative in Los Angeles, Mr. Herbel and Mr. Greenberg?

A. I don't recall his having said that. He may have.

Q. Is that all you recall about your conversation with Mr. Levinson in April, 1950?

A. That is all I can recall at the present time.

(Deposition of Seymour Simon.)

Mr. Johnston: How long did that meeting take, Mr. Simon?

The Witness: I don't recall.

Q. (By Mr. Westbrook): I take it it was a relatively [1234] short meeting.

A. I don't recall how long it took, and I don't know what you mean by relatively short.

I will say that I have known Mr. Levinson since 1938, 1939 or 1940, and I have seen him on several occasions since then.

I like to think he is a friend of mine. And usually when I go into his office and see him, I talk about other things than the immediate problem at hand.

We might have talked about other subjects than the Paradise Theatre both before and after we talked about the Paradise.

Q. Actually, you are on friendly terms with a number of the members of the legal staffs of the various distributors in New York, is that correct?

A. Well, I certainly have friendly feelings toward a lot of lawyers who work for film companies in New York. I think they are nice people, doing their job. I often differ with them on what I think the law requires, and also what I think is good judgment. But lawyers working for the film companies obviously have a different point of view than I have working as a lawyer for independent exhibitors, and I hope that they have this friendly feeling towards me which [1235] I have towards them.

(Deposition of Seymour Simon.)

Mr. Johnston: It isn't confined exclusively to New York lawyers, this feeling of friendship, I hope?

The Witness: Well, I hope it isn't either.

Q. (By Mr. Westbrook): I show you now three documents, which consist of correspondence between you and Mr. Levinson, being respectively dates of June 7, 1950, which is Defendants' Exhibit H-7 for identification, June 9, 1950, which is Defendants' Exhibit H-8 for identification; and June 15, 1950, which is Defendants' Exhibit H-9 for identification.

I will ask you if you recall sending, or as the case may be, receiving those letters on or about the dates which they bear? A. I recall H-7.

I recall H-8.

I recall H-9.

Q. Now during the period from the time of your conversation with Mr. Levinson in New York in April, 1950 until the opening of the Paradise Theatre, did you, to the best of your recollection, have any other conversation with any representative of Warner Brothers about the Paradise Theatre?

A. No, except I might have had a long distance telephone conversation with Mr. Levinson. [1236]

Q. You don't have any distinct recollection one way or the other?

A. It seems to me that I did call him as a follow-up to the letters that you just showed me, and I asked him to find out what his company was going to do.

As I recall it, I asked him what the decision was

(Deposition of Seymour Simon.)

with regard to the Paradise, and he said he didn't know, that would be made by the distribution people.

I asked him to find out what it was, and advise me, and he said he would try to do it and let me know.

I don't believe he ever did advise me.

Q. Do you recall learning before the opening of the Paradise that the opening picture on the top half of the program was a Warner Brothers picture on a seven-day availability?

A. I don't recall that.

Q. Does that refresh your recollection learning either from Mr. Levinson or someone else that Warner's had agreed to license three Warner Brothers pictures to the Paradise on a seven-day availability in succession on an experimental basis to see what the results would be on that availability.

A. That does not refresh my recollection. I don't recall that. [1237]

Q. Now turning to Universal, did you in April, 1950, when you were in New York with Mr. Schreiber, have a conversation with a representative of Universal Pictures Company, Inc., or Universal Exchanges, Inc.?

A. Yes, I did.

Q. That was Mr. C. S. Landau?

A. Cy Landau.

Q. I take it that conversation occurred in Mr. Landau's office, is that right?

A. Yes.

Q. You and Mr. Schreiber and Mr. Landau were present?

A. We were present, yes.

(Deposition of Seymour Simon.)

Q. Was there anyone else, as you recall it?

A. Well, I don't recall. I do remember that Mr. Landau had a desk that was right near the door, and whether there was another desk in the room that someone else occupied, and whether that person was there, I don't remember. But if the person was there, he or she didn't participate in the conversation regarding the Paradise.

Q. Now will you tell me as nearly as you recall what was said by you, Mr. Schreiber and Mr. Landau on that occasion?

A. Well, either Mr. Schreiber or I told him about [1238] the Paradise Theatre being built where it was located, how big it was going to be, what kind of a theatre it was going to be, and then I told him that we wanted to play their pictures on first-run showing in Los Angeles.

I pointed out to Mr. Landau that Universal sold its pictures to four or five theatres in the Los Angeles area for a multiple first-run showing, and I believe I told him that all or a majority of those theatres were Fox Theatres, and that I saw no reason why they shouldn't permit an independent to break into the first-run exhibition field on their pictures.

I told him what we preferred to do is to play their pictures and let anyone else who wanted to play, who they wanted to license, play their pictures along with us, that if they weren't agreeable to that, then we would be able to bid against other theatres for an additional first-run showing, that is, in addi-

(Deposition of Seymour Simon.)

tion to what they were then selling, and if they weren't agreeable to that, then I saw no reason why we shouldn't be permitted to bid against a theatre, I believe in Culver City.

Q. Culver Theatre?

A. Well, that sounds like the name of it, but it was a theatre, I knew, in Culver City that was playing [1239] their pictures on a first-run showing.

I believe I gave them the name of the theatre in Culver City at the time. Now whether it was the Culver Theatre or not, I don't now recall.

I went on and told him that I thought that since they had this multiple first-run policy, I could see no justification for excluding us from the opportunity to compete for first-run showing of motion pictures.

Q. Do you recall what Mr. Landau said in response to that?

A. I believe he said that he would have to look into it and let me know.

Q. In that connection, did you say anything about the Paradise Theatre being competitive with the Culver Theatre in the sense, to some extent at least, on a first-run policy they would be dependent upon the same patronage?

A. No. What I told them was really just the opposite of that, that I thought that we could play pictures on a first-run showing at the same time as that theatre in Culver and not affect the Culver Theatre to any marked extent, any noticeable extent.

(Deposition of Seymour Simon.)

Q. In other words, it was your view, I take it, that the Culver Theatre does not draw any substantial [1240] number of patrons out of the Westchester area?

A. Well, I don't know that I had an opinion on that. But I told him that I felt that if we played on a first run, that would create additional business, and we would do business and the Culver would do just as much business as they had ever done.

But I did tell them that if he was not willing to sell us that way, and if the only way we could get into the first-run market was by bidding against the Culver Theater, or the theatre in Culver City—I am assuming now that you said so that it was the Culver Theatre—that if the only way we could get into first-run was by bidding against that Culver Theatre for the pictures, that they were showing, then we would be willing to do that, although I thought and I expressed to him the thought that the wisest distribution policy would be to add additional first-runs.

Q. Did you have any conversation with him about the number of additional first-runs that would be necessary or desirable to add in the Los Angeles metropolitan area?

A. I believe he might have raised the question as to how many additional first-runs they would have to create if they gave the Paradise Theatre first-run [1241] pictures, and where they would stop.

And I also told him that their policy of multiple first-runs in Los Angeles had apparently been a

(Deposition of Seymour Simon.)

good policy for them, and I felt they would be better off by having additional first-runs.

And I told them, how many additional first-runs they should have, I couldn't answer. That was their problem.

Q. Did Mr. Landau say anything to you about the fact that Universal was having trouble carrying the overhead of five theatres on a first-run day and date policy and was considering reducing the number of day and date first-runs?

A. No, I don't recall his saying that at all.

Q. Your recollection is simply that he said he would look into it and advise you, is that right?

A. That is right.

Q. Now what was said with respect to any other run or availability, if you recall?

A. I don't think anything was said about any other run or availability in that conversation.

Q. Do you recall that following your conversation with Mr. Landau in his office, while you were still in New York, you had a telephone conversation with him?

A. I recall talking to him again. Whether he [1242] called me and asked me to come over and see him and I saw him again, or whether I spoke to him on the telephone, I don't remember, but I do know that he gave me an answer while I was in New York to the request that Mr. Schreiber and I had made.

Q. And what was that answer? [1243]

A. The answer was that under no circumstances

(Deposition of Seymour Simon.)

would they offer first-run pictures to the Paradise Theatre on any basis.

Q. That is, first-run Los Angeles?

A. I said pictures to the Paradise Theatre on a first run showing on any basis. That is not without bidding against the Culver. And they wouldn't permit us to bid against the Culver or any other theatre, that they just weren't going to let the Paradise have the opportunity to play their pictures first-run.

Q. I just want to be clear. They only used the term "first-run." You were talking about first run Los Angeles and not first run Inglewood?

A. First run Los Angeles.

Q. Do you recall whether on that occasion or your second conversation with Mr. Landau there was any discussion about a seven day availability?

A. Yes, there was.

Q. What was said in that respect?

A. Well, I told him since that was his position on first run, we had to have pictures to play in the theatre, and the next best thing was the seven day availability.

And so I was asking him to permit us to play on a seven day availability without bidding against other theatres. [1244]

Q. Do you recall telling him that Mr. Schreiber would be satisfied with that availability?

A. I don't recall telling him that, no, because he wouldn't be satisfied with anything short of first run.

(Deposition of Seymour Simon.)

But I think I probably did express to him the idea that since we couldn't get first run, we had to try to get the next best thing, which was the seven day availability.

Q. I show you now a photostatic copy of an original of a letter on the letterhead Universal Pictures Company, Inc., addressed to you, signed by Mr. Landau, under date of May 4, 1950, which is Defendants' Exhibit I-5 for identification, and ask you if that refreshes your recollection that you did, in fact, tell Mr. Landau that Mr. Schreiber would be satisfied with a seven day availability, provided that there was no bidding?

A. That does not refresh my recollection, and I deny that I told him that Mr. Schreiber would be satisfied with a seven day availability, even though there was no bidding in lieu of first run.

I did tell him what we did want, since we could not get first run, a seven day availability without bidding.

Q. Now, on the occasion of that conversation—"

Mr. Mitchell: On that letter, your Honor, I think perhaps that is one that should go into evidence. [1245]

Mr. Corinblit: Speaking now as counsel for plaintiff, your Honor, every one of these letters will be in evidence and we will put each and every one in. If we want to put in all the evidence that is marked here, that is one thing, but if we are going to do it piecemeal, I think it is not appropriate.

(Deposition of Seymour Simon.)

Mr. Mitchell: That has reference to context. To put all the letters in without reference to context doesn't accomplish the purpose. Here a witness is being asked about a particular letter, not simply identifying it. He is being asked about a particular letter, and in order to get the context of it, this is the time when the letter should come in, and we desire to offer it.

Mr. Corinblit: All right, your Honor. I withdraw the objection.

The Court: It may be received in evidence and marked.

The Clerk: Universal's Exhibit B-3.

(The exhibit referred to was received in evidence and marked as Universal's Exhibit B-3.)

* * * * *

Mr. Corinblit: Speaking as attorney for the plaintiff, we will now go to page 66, beginning with the question, "Now during the period."

Mr. Westbrook: I can't hear you, counsel.

Mr. Corinblit: Beginning with the question, "Now during the period," and so forth.

(The reading of the deposition was resumed by counsel, as follows):

"Q. Now during the period from the time that you talked to Mr. Landau in New York until the opening of the Paradise Theatre, do you recall having had any other conversations with Mr. Landau or anyone else representing Universal with respect to the Paradise Theatre?

A. I don't recall any further conversations with

(Deposition of Seymour Simon.)

respect to Mr. Landau, and I don't believe I had conversations with anyone else.

Q. Now turning your attention next to RKO, did you, when you were with Mr. Schreiber in New York in April, 1950, see any representative of that company with reference to the Paradise Theatre?"

Mr. Mitchell: I object to the question upon the ground that it is immaterial whether he saw or talked with RKO, which is not a defendant in this action.

Mr. Corinblit: Speaking as attorney for the plaintiff, [1249] your Honor, we have gone into this before. This tells the whole picture of the relationship with the defendants and distributors in New York and Los Angeles. I think heretofore you have permitted that evidence in. On that ground, I think you ought to permit this.

The Court: Overruled.

Mr. Mitchell: May our same objection go to all these questions with regard to RKO?

The Court: Yes, you can have a running objection.

Mr. Corinblit: We will now resume with the deposition.

(The reading of the deposition was resumed by counsel, as follows):

"A. Yes.

Q. Mr. William Zimmerman, is that correct?

A. That's right.

Q. And E. Compton Timberlake?

(Deposition of Seymour Simon.)

A. I don't recall Mr. Timberlake being present. He might have been.

Q. Do you recall anyone else being present?

A. Mr. Schreiber.

Q. And I take it that conference or conversation occurred in Mr. Zimmerman's office? A. Yes.

Q. Now will you tell me as nearly as you recall what [1250] was said by you and Mr. Schreiber, and what was said by Mr. Zimmerman on that occasion?

A. Either Mr. Schreiber or I told Mr. Zimmerman we wanted to get pictures for showing at the Paradise on a first-run Los Angeles, and that we wanted to play the RKO pictures on that arrangement.

Mr. Zimmerman had known Mr. Schreiber before that meeting, and he also knew me. And as I recall it, he treated that request in kind of a joking manner.

He told Mr. Schreiber that Mr. Schreiber really didn't want that, and he ought to forget about that.

Q. Did he say why?

A. I think he said there wasn't any chance of his getting that and he just ought to forget about it and——

Q. Did he say it was RKO policy to license its top features in the RKO Hill Street and Downtown Los Angeles and the RKO Pantages in Hollywood so far as the first-run showing was concerned?

A. I don't recall whether he said that or not.

Q. Do you recall anything else being said about

(Deposition of Seymour Simon.)

the subject of Los Angeles first-run either by you or Mr. Zimmerman or Mr. Schreiber?

A. I think I told Mr. Zimmerman that he had always held himself out to me as a person who wasn't unwilling to depart from established traditions in motion picture [1251] distribution, and I told him that this was a good opportunity to break out with more first-runs in Los Angeles and bring about a result where RKO would make a lot more money from the first-run showing of motion pictures in Los Angeles and from the whole Los Angeles territory than they were making when they confined exhibition to a couple of theatres.

Q. Do you recall either Mr. Zimmerman or anyone else present stating that in view of the RKO people, the theatres that were exhibiting RKO pictures on first-run Los Angeles were in substantial competition with the Paradise, and therefore that RKO would be unwilling to offer a day and date first-run to the Paradise.

A. I don't recall his saying that.

Q. Now after that phase of the conversation, is that all you recall being said about first-run Los Angeles? A. That's all I remember.

Q. Do you recall anything being said about the Loyola?

A. Oh, yes, I believe that we pointed out to him that there had been some RKO pictures that had played the Loyola Theatre first-run. He said that they were pictures that the RKO Hill Street and

(Deposition of Seymour Simon.)

RKO Pantages Theatre in Hollywood did not want to play, so they had sold the pictures to Fox.

Q. They were program pictures, or second feature?
A. Well, I don't remember that.

Q. Do you recall any mention being made of Tim Holt [1252] Western in that conversation?

A. Yes. I think he went into the pictures and pointed out that at least some of the pictures were not pictures of outstanding quality.

Q. Pretty limited box office value?

A. Well, some of them were. I don't recall all the pictures. I think there were a couple of pictures that had a pretty good box office appeal, though.

Do you have a list of the pictures?

Q. I do.

A. Wasn't there a Jimmy Stewart picture in that group?

Q. You have an amazingly good memory.

Mr. Johnston: Did you have a list of pictures with you at that time, Mr. Simon, which had been exhibited at the Loyola Theatre?

The Witness: Mr. Schreiber had such a list, pictures which had been exhibited first-run at the Loyola Theatre during a preceding period of three or four years. I forget how far back the list went.

Mr. Johnston: Did you leave that list with any distributor with whom you talked during this period in April?

The Witness: I don't recall.

Mr. Westbrook: Off the record.

(Discussion had off the record.)

(Deposition of Seymour Simon.)

Q. (By Mr. Westbrook): The Jimmy Stewart picture you [1253] referred to is 'Magic Town'?

A. That's right, 'Magic Town' is the picture.

Q. That played at the Loyola back in 1947?

A. '47, and I pointed out to him that that was a picture that certainly had good box office appeal.

Q. Now I take it that none of the other pictures there fall in the category of the pictures that had good box office appeal, so far as you recall?

A. I don't recall all of these pictures. I am not in a position to say now. Some of them might have been pictures that were pretty good pictures.

Q. Do you recall anything else being said about first-run in the course of your conversation with Mr. Zimmerman? A. No.

Q. After you discussed first-run, did the subject of seven-day availability come up? A. Yes.

Q. Do you recall Mr. Schreiber saying on that occasion that it would be acceptable to him if he were licensed RKO products for exhibition in the Paradise seven days after first-run Los Angeles, provided that the Paradise wasn't required to bid for that run? A. I don't recall his saying that.

He did and I did ask for the opportunity to license their RKO pictures on a seven-day availability after first-run [1254] without bidding, but that was only if RKO was unwilling to license pictures to us on a first-run showing.

Q. Do you recall what Mr. Zimmerman said in that respect?

A. Well, he said that he thought that would

(Deposition of Seymour Simon.)

be pretty hard, because he felt the theatres in Inglewood were competitive to Paradise Theatre, or would be competitive when it was opened, and that if they wanted the opportunity to compete for first-run billing, he did not see how he could exclude them from that opportunity; and that if he did try to exclude them, he would be discriminating against them.

I told him that that was not my view of the law.

My view of the law was that even if two theatres were in substantial competition with each other, the distributor had the right to tell both of these theatres, 'I am not going to sell either of you clearance over the other, but I will permit the two of you to play day and date, and one exhibitor could not object because he didn't have the opportunity to buy exclusivity over the other exhibitor.'

Q. In other words, the distributor had the right to determine how many or how few runs he would license on each availability?

A. No, I didn't say that.

I simply said that my view of the law was that if [1255] two theatres were right across the street from each other, and obviously for that reason in substantial competition, the distributor could say to the two of them, 'I am not going to have bidding between you for an exclusive run. My pictures are available to both of you to play on the same availability.' And as long as he didn't discriminate between them and the film rental terms he demanded, I didn't feel that one of those exhibitors

(Deposition of Seymour Simon.)

would have any sound legal position to maintain that he shouldn't be required to play that way, but he should have the opportunity to buy clearance priority of run over the other theatre; and if he was denied that opportunity, he was being discriminated against, and the antitrust laws were being violated.

I told Mr. Zimmerman that no distributors in my view had to justify a refusal to grant clearance or priority of run in favor of one theatre over another, that the only time they have to justify clearance was when they granted it, and then the burden was on the distributor to justify that the clearance was granted in favor of one theatre over another theatre with which it was in substantial competition.

I also told him that notwithstanding that, I didn't think it would affect the theatres in Inglewood any if the Paradise Theatre played day and date with Inglewood, and I told him that the best way of proving that, instead of sitting around the New York office and speculating about it, [1256] was to license a representative number of pictures to the Paradise Theatre for simultaneous showing with a theatre in Inglewood or anywhere else and see what the effect of that actual experience was.

Incidentally, I might say that I recall expressing the same idea, as I just stated I expressed to Mr. Zimmerman, with regard to a distributor having the right to refuse to grant clearance and permitting two theatres which were obviously directly competitive to play day and date together. I ex-

(Deposition of Seymour Simon.)

pressed the same idea in approximately the same words to Mr. Keogh and Mr. Phillips. [1257]

Q. We will go back to that in just a moment, then.

With regard to your conversation with Mr. Zimmerman, what did Mr. Zimmerman say in response to your statement?

A. Well, he said that wasn't his view of the law.

Q. Do you recall that at the conclusion of that conversation Mr. Zimmerman stated that he would give further consideration to the request made with respect to the seven-day availability.

A. Yes. Before he said that, he said really what I was trying to come there and do is get RKO to set the Paradise Theatre up in a way where it would be isolated from competition, and really I was trying to restrain trade by my request by making it impossible for the theatres in Inglewood to have the opportunity to compete against the Paradise for the license of pictures.

I told him that following my request wouldn't have that effect at all, and if he permitted the Paradise to play day and date with theatres in Inglewood, there would be more competition between them, because then they would compete for patronage and probably it would result in additional price competition and additional services to patrons.

Q. Did Mr. Zimmerman say anything about the fact that day and date runs in Inglewood and Westchester would have the effect of reducing the box

(Deposition of Seymour Simon.)

office return for theatres involved and would thus effect ultimately the return to the [1258] distributor on that availability?

A. Yes, I think he said that.

And I told him that all he was doing was sitting around a big fancy New York office and in a great big tall building speculating about the thing, and that he actually didn't know, and I didn't know, and the best way to find out was on the basis of actual experience; and the way he could get that is by licensing a number of pictures in the way I suggested and then examining the results.

Q. Do you recall mention being made of the fact that as you add day and date exhibits in a given area or locality, that the problem of theatre overhead enters into it, in that on that availability, then the distributor is required to carry additional theatre overhead or as many additional overheads as there are additional runs?

A. No, I don't recall that. But I believe Mr. Zimmerman said, well, they just can't let every theatre play on an early run, and they had to draw the line.

And I pointed out to him that here in Chicago where they had increased the number of pictures playing, the number of theatres playing on the first neighborhood run during the period from 1947 to 1950, that the result had always been that RKO as a distributor was benefited because it got more play dates at early run theatres which played the pictures a week instead of a split week, and that those

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[1259] theatres charged a higher admission price than theatres playing on a later run, and therefore the gross on the RKO pictures was greater, and RKO got a greater film rental when it licensed pictures on a personal basis.

And I believe I also told him that I didn't understand why it was that I had to bring all these cases to try to accomplish that result in Chicago and fight the distributors all the time in order to bring about a result that in the end would mean more film rental to them and a better method of distribution for them.

And I think when we were in the Chicago situation, discussing that, I pointed out to Mr. Zimmerman that the selling plan they had adopted in Chicago actually permitted them to get more first neighborhood runs, second runs in Chicago than any other distributor, and that I thought they had adopted a wiser method of distribution in Chicago than any other distributor had; and I recommended they follow the same approach out there.

Q. What did Mr. Zimmerman say in response to that? A. I think he just listened.

Q. Did he say anything?

A. Didn't respond much.

Q. Did he say in his view Inglewood and Westchester were one competitive area?

A. I don't recall him saying that, but he maintained [1260] that there was substantial competition, or would be, between Paradise Theatre and Inglewood, and it would affect the theatres in In-

(Deposition of Seymour Simon.)

glewood very, very adversely if the Paradise played simultaneously with them.

And whenever he said that I told him he was just sitting up there in that big office, in the RKO office, guessing, but he really didn't know.

Q. Do you recall his saying that the RKO method of licensing his pictures in the Inglewood area afforded RKO one week's playing time on seven-day availability and then additional week's playing time on 14 days availability, so that they actually got a total of two weeks' exhibition in the Inglewood-Westchester area on early runs?

A. I don't recall that.

Q. Now do you recall anything else being said in your conversation with Mr. Zimmerman?

A. Well, Mr. Zimmerman, at the end of the meeting, said that he would like to do what he could for Alex because he loved Alex very much and he thought a lot of him and he was a wonderful guy and he would see what he could do, and he would break his back to try to do something which would be helpful and advantageous to the Paradise Theatre.

Q. Now is that all you recall about the conversation at the meeting?

A. I think Mr. Zimmerman also said he was going to [1261] try to accomplish that, not only because of his fondness for Alex Schreiber, but also because of his fondness for me too.

Q. Anything else? A. That's about all.

Q. All right. I show you now photostatic copies

(Deposition of Seymour Simon.)

of the following letters, which are between you and Mr. Zimmerman.

One dated June 7, 1950, which is Defendants' Exhibit P-6 for identification;

One dated June 20, 1950, which is Defendants' Exhibit P-7 for identification.

I will ask you if you recall sending one letter and receiving the other at or about the dates which they bear.

A. Yes, with respect to P-6.

Yes, as to P-7.

Q. Does Defendants' Exhibit P-7 refresh your recollection in any way with respect to Mr. Timberlake being present at the conversation which you had with Mr. Zimmerman?

A. Well, it doesn't refresh my recollection, but Mr. Zimmerman says he was present, and I certainly wouldn't deny it.

I said before that I wasn't sure, and my recollection is not refreshed.

I had this difficulty, that Mr. Timberlake was with RKO for a while, and then I believe he left RKO and wasn't in the employ of any motion picture company.

And I believe during the period he was [1262] with RKO, I saw him on some occasions, and then I saw him after he left RKO, and then he became employed by Paramount Pictures, and I have seen him since he has been with Paramount.

And it's sort of difficult for me to place the times

(Deposition of Seymour Simon.)

I have seen Mr. Timberlake, but he might very well have been.

Q. His employment with Paramount has been within the last two or three years, is that right?

A. It might be as far back as four years ago. I don't know.

Q. Does Defendants' Exhibit P-7 refresh your recollection in any other respect with regard to the conversation you had with Mr. Zimmerman?

A. No.

Q. I show you next a photostatic copy of the original of a letter on letterhead of RKO Radio Pictures, Inc., under date of August 17, 1950, and ask you if that letter or a copy of it came to your attention shortly after the date which it bears.

A. I don't recall.

Q. Now during the period from the time of your conversation with Mr. Zimmerman in New York until the opening of the Paradise Theatre, did you have any other conversations with anyone representing RKO? [1263]

A. Not that I can recall.

Q. Now you mentioned in the course of your testimony with respect to your conversation with Mr. Zimmerman that you had mentioned to Mr. Keogh, perhaps to Mr. Phillips, I don't know, that in your view the existence of substantial competition did not require a distributor to grant clearance.

Do you recall making that comment as you went along?

A. Yes. I think when I—There is no question pending.

(Deposition of Seymour Simon.)

Q. Did you tell Mr. Keogh and Mr. Phillips in substance what you stated you told Mr. Zimmerman with regard to that particular subject?

A. As to what subject? Let's get the record straight.

Q. The legal proposition that you advanced, that a distributor was not required to grant clearance, even though substantial competition existed.

A. Yes, I think when I testified on Thursday last regarding my conversation with Mr. Phillips and Mr. Keogh, I said there was another theory of distribution that we discussed, and I couldn't remember what it was. And I think that's the line of conversation that our discussion got us into. [1264]

Q. Do you recall what was said by Mr. Keogh or Mr. Phillips in that respect?

A. Well, I don't recall Mr. Keogh said anything about it.

Mr. Phillips took the position, as I recall, if there were two exhibitors in substantial competition, and one of them wanted clearance, Paramount was obliged under the law to give him the opportunity to bid against the other theatres so that he would have an opportunity of getting clearance.

Q. Do you recall Mr. Phillips saying regardless of the legal merit of your proposition, it wasn't good business to follow that suggestion?

A. I don't recall that.

Q. While we are back on Paramount, to be sure we have exhausted your recollection in that regard, was anything said in the course of your conversa-

(Deposition of Seymour Simon.)

tion with Mr. Keogh and Mr. Phillips about the ownership of the Paramount Hollywood and Paramount Downtown Theatres, or the fact that at that time a subsidiary of Paramount had an interest in the operation of those two theatres?

A. I don't recall that.

Q. Now, directing your attention for the moment back to the conversation with Mr. Levinson, was [1265] anything said about the Loyola Theatre in your conversation with him?

A. May I take a look at Exhibit P-8 for identification?

Q. You may. A. I don't recall.

Q. In your conversation with Mr. Landau at Universal, was anything said about the Loyola Theatre?

A. Well, I think actually in all of these conversations, when we talked about getting pictures, we did say that the Loyola Theatre, which was just a couple of blocks away from us, was probably in substantial competition with us, and therefore we would have no objection to bidding against the Loyola Theatre where the picture was licensed to us on the first-run or seven-day availability.

I think that mention was made of the Loyola in the conversations with Mr. Keogh and Mr. Phillips, with Mr. Melniker and Mr. Eisenberg, with Mr. Levinson, with Mr. Landau, and with Mr. Zimmerman, and with Mr. Timberlake if Mr. Timberlake was present.

Q. I take it no one disagreed with that?

(Deposition of Seymour Simon.)

A. No one took exception to that.

Q. Apart from that mention of Loyola, do you recall any other mention of Loyola being made in [1266] your conversations with Mr. Landau?

A. With Mr. Landau?

Q. Yes.

A. No.

Well, yes, I do. I recall Mr. Schreiber pointing out to him that the Loyola Theatre had been playing pictures on first-run for some time and doing very well, and therefore that indicated that that Westchester area was an area where a first-run theatre would do well, and if they permitted an outlet for their pictures on first-run showing at the Paradise Theatre, the Paradise Theatre would do as well as the Loyola Theatre.

That was mentioned by Mr. Schreiber, I believe, in all of these conversations.

Q. Now in your conversation with Mr. Landau, when that was mentioned, do you recall his saying that the Culver Theatre was substantially closer to Westchester than any theatre that was playing pictures on simultaneous exhibition with the Loyola Theatre?

A. I do not recall his saying that.

Q. Do you recall the La Tijera Theatre being mentioned in any of the conversations that you testified you had with these various distributors or the various representatives of distributors in [1267] New York in April, 1950?

(Deposition of Seymour Simon.)

A. It might have been mentioned in the conversation with Mr. Phillips and Mr. Keogh.

Q. Do you recall what was said about it in that conversation?

A. I don't have a strong recollection, but it's possible that they may have said they were considering a selling arrangement under which, if the La Tijera Theatre wants to bid for seven-day showing, the Paradise would not be able to play the picture; but if the bid was won by a theatre in Inglewood, then the Paradise would be permitted to play the picture along with the theatre in Inglewood.

Q. That was in regard to the seven-day availability?

A. Yes. Now instead of that being said in conversation with Mr. Phillips and Mr. Keogh, it might have been said in the conversation with Mr. Melniker and Mr. Eisenberg, or perhaps it was said in both.

Q. Is that all you recall about the La Tijera?

A. That's all I recall.

Q. To refresh your recollection in that respect, I will show you a group of letters dated February 6, 1950, addressed to the local exchanges in Los Angeles, and call your attention particularly to the second sentence in the second paragraph, and ask you if [1268] that refreshes your recollection that either you or Mr. Schreiber stated in the course of your conversations with each of these representatives that the Paradise would desire clearance over the La Tijera?

(Deposition of Seymour Simon.)

A. I do not believe that in any of these conversations did Mr. Schreiber and I state that we would desire clearance over the La Tijera.

As a matter of fact, we indicated we had no objection to the La Tijera playing simultaneously with us, and we——

Q. Is that true with respect to both first run and seven day availability?

A. Well, I don't think there was any conversation about the La Tijera on first run at all.

I think that in the case of some of the others—I don't remember it in the case of Mr. Landau, but it's possible in the case of Mr. Zimmerman and Mr. Levinson—they asked what our view was regarding the La Tijera, and we said we thought they were more competitive in the theatres in Inglewood than with us, and we would have no objection to playing simultaneously with them.

The only theatre that we indicated we thought we should bid against was the Loyola Theatre.

Q. Do you recall saying that you thought that the La Tijera was more competitive with the Paradise than the [1269] theatres in Inglewood were?

A. The view we expressed if the La Tijera was mentioned, was that we thought the La Tijera was more competitive with the theatres in Inglewood than it was with the Paradise.

Q. Going on to the other distributors, do you recall having had any conversation with any representative of Columbia during the course of your visit to New York in April, 1950?"

(Deposition of Seymour Simon.)

Mr. Mitchell: I object to that and all questions with respect to Columbia on the ground the evidence is incompetent, irrelevant and immaterial and outside the issues.

The Court: Same ruling. The objection is overruled. You may have a running objection to this line of testimony.

Mr. Mitchell: Thank you.

(The reading of the deposition was resumed by counsel, as follows:)

"A. Well, I think that I went up to the Columbia office, and I was trying to get hold of Irving Morrass, and he wasn't available.

And I think I saw either Max Rose or Sam Reice—I am not sure which—and told them why I wanted to see Mr. Morrass, it was in connection with the Paradise Theatre, and that was about all. [1270]

Q. You didn't see Mr. Morrass in the course of that trip? A. I don't believe we did.

Q. Do you recall whether or not you had any conversation with any representatives of United Artists in April, 1950?

A. I don't recall any conversation with any representative of United Artists.

Q. Going back to RKO for the moment, between the time of your conversation with Mr. Zimmerman in New York and the time of the opening of the Paradise Theatre, did you have any conversations with any representative of RKO about the Paradise Theatre? A. Not that I recall.

Q. Similarly, did you have any conversations

(Deposition of Seymour Simon.)

with any representatives of United Artists or Columbia during the same period of time?

A. Not that I recall."

Mr. Corinblit: Now, just a minute. I would like to now, speaking as attorney for plaintiff, go to page 93.

Incidentally, while we are on this point, counsel, I take it there will be no problem about our stipulating as to the sending and receiving of all these letters that you identified. [1271]

Mr. Mitchell: Right.

Mr. Johnston: And will there be any problem of the authorship of them, whether Mr. Simon wrote them or someone else?

Mr. Corinblit: No, I am sure not.

(The reading of the deposition was resumed by counsel, as follows:)

"Q. Now do you recall, Mr. Simon, that there was a period of time in the latter part of 1950 and the early part of 1951, during roughly from about October of '50 to the early part of May '50, when you spent a considerable amount of time in Los Angeles in connection with other legal matters?"

Mr. Mitchell: That was May 1951. You misread it.

Mr. Herscher: That's right, May of '51.

Mr. Corinblit: Now, speaking as Mr. Simon.

(The reading of the deposition was resumed by counsel, as follows:)

"A. I spent several weeks there during that period in connection with legal matters.

(Deposition of Seymour Simon.)

Q. Do you also recall that following the opening of the Paradise Theatre, there was a period of approximately three months' duration during which time Marco Wolff and a corporation known as Southside Theatres, Inc., represented [1272] the Paradise Theatre in the buying and booking of motion pictures?

A. I recall that some organization with which Marco Wolff was connected for some period of time after the opening of the Paradise did handle the buying and booking of pictures for the Paradise Theatre.

Now how long a period of time that covered, or exactly when, or the name of the corporation that was assigned that task, I do not know.

Q. And then you recall, do you, that after Marco Wolff ceased his representation of the Paradise Theatre, that an organization known as Exhibitors Service and two individuals, whose names are Harry Rackin and Sid Lehman, undertook to represent the theatre in connection with the buying and booking of motion pictures?

A. I don't know about Exhibitors Service, but I know that Sid Lehman did. Maybe that was the name of his corporation through which he did business.

Q. During the period that Marco Wolff represented the theatre, do you recall having had any conversations with any representative of any motion picture distributor about Paradise Theatre?

A. Well, I don't know exactly during what pe-

(Deposition of Seymour Simon.)

riod Mr. Wolff was connected with the operation of the theatre, so that is a pretty difficult question for me to answer. [1273]

Q. I mean, I will state that his representation ceased on December 4, 1950. I think I may have a letter to that effect.

A. Well, are you sure of the date?

Q. Yes, I am.

A. I will accept your word. I had a conversation with Mr. Phillips.

Q. Do you recall when?

A. It was either in the month of October or November of 1950.

Q. Do you recall where?

A. I believe it was at the law office of O'Melveny & Myers.

Q. In Los Angeles? A. In Los Angeles.

Q. Do you recall who else was present?

A. I believe Mr. Taylor was present.

Q. Mr. Taylor?

A. Yes. And I believe Mr. Smith.

Q. George Smith?

A. Might have been present.

Q. Anyone else?

A. I don't recall anyone else being present.

Q. Now do you recall what was said by you and by the other parties you have mentioned at that conversation? [1274]

A. Yes. I again asked them about the possibility of getting pictures for the Paradise first run Los

(Deposition of Seymour Simon.)

Angeles, and they told me that was out of the question.

And then I asked them about getting pictures on the seven day availability.

They said it was out of the question for the present, but at some later time when they got out of this franchise difficulty, they expected to set up a large number of day and date first runs in Los Angeles. But until they got out of that, their answer was the same as I had previously been given by Mr. Phillips.

Then I asked them about getting pictures on a seven day availability without being required to bid against other theatres, except for the Loyola, and I told them that it was the experience of Mr. Schreiber that the bidding in Inglewood between the United Artists theatre circuit and Fox theatres became quite spirited, and they could afford to submit big bids on pictures in order to take them, and eventually put the Paradise out of business as a competitor; and the result of the bidding going on would eventually be to eliminate the competition of the Paradise Theatre.

I told him I thought that, and was requesting for some period of time to license their pictures to the Paradise Theatre at fair and reasonable film rentals to play simultaneously with theatres in Inglewood and the La Tijera. [1275]

Q. Do you recall any of the persons whom you have mentioned stating that under the Paramount distribution procedure in the Inglewood-West-

(Deposition of Seymour Simon.)

chester area, that the Paradise Theatre could play day and date with any theatre but the La Tijera?

A. Yes, I believe that they had what they called a leap-frog system. I think that's what Mr. Taylor called it.

Q. You mean you recall him making the statement?

A. Yes. But I pointed out that still the Paradise Theatre was required to bid in order to get pictures, and we didn't want to have to be bidding against theatres that were located in Inglewood.

Q. And what was said by Mr. Taylor or Mr. Smith and Mr. Phillips in that regard?

A. I believe they said that the method of distribution that they were employing at that time was all that they were able to do. They wouldn't be able to go beyond that.

Q. Do you recall anything else being said at that meeting? A. No.

Q. Now do you recall any other conversations between the opening of the Paradise and December 4, 1950, which you had with any representative of any motion picture distributor? A. No.

Q. I show you now photostatic copies of two telegrams, one addressed by you to Mr. Melniker, which is Defendants' [1276] Exhibit D-16 for identification, dated November 7, 1950, and the other which is a response to Mr. Melniker's letter, under date of November 10, 1950, which is Defendants' Exhibit D-17 for identification, and ask you if that

(Deposition of Seymour Simon.)

refreshes your recollection as to a conversation with Mr. Melniker.

A. No, it doesn't refresh my recollection.

Q. You don't recall whether or not you did have a phone conversation with him, or that exchange of telegrams?

A. Well, in that period I was talking to Mr. Melniker by long distance telephone fairly frequently. I don't recall any conversation about the Paradise at this time.

Q. Do you recall having had any conversations with Mr. Harry Swerdlow of the law firm of Loeb & Loeb during the period up to December 4, 1950?

A. Yes.

Q. About the Paradise Theatre?

A. Well, I don't know whether it was—I would say it was prior to December 4th, yes.

Q. I take it just you and Mr. Swerdlow were present at that time?

A. I believe so.

Q. Do you recall what was said by him and what was said by you? [1277]

A. Well, I told him what it was that the Paradise Theatre was seeking the opportunity to do; to play first run pictures in Los Angeles, and if they couldn't get that, then the opportunity to play pictures on seven day availability without being required to bid against other theatres.

And he said he would take it up with the distributors he represented.

And I believe that I told him I thought the best thing to do was to have Mr. Schreiber speak to him

(Deposition of Seymour Simon.)

directly, and I arranged for a meeting between Mr. Schreiber and Mr. Swerdlow.

Q. Do you recall arranging for Mr. Schreiber to take Mr. Swerdlow on a tour of the theatres in the Inglewood-Westchester area?

A. I might have arranged for that. I don't have any strong recollection of it now.

I do know that Mr. Schreiber and Mr. Swerdlow may have known each other before I was there. I am not sure. But if they didn't, I arranged for them to meet each other. And if they had known each other, I paved the way for them to become better friends.

Q. Is that all you recall about the Swerdlow conversation? A. Yes.

Q. During that period of time, did you have any conversations [1278] with Mr. William Carmen at the Paradise? A. Who?

Q. William Carmen, Bill Carmen, C-a-r-m-e-n, of the law firm of O'Melveny & Myers?

A. I don't recall any.

Q. Or with Gordon Files of the law firm of Freston & Files? A. I don't recall any.

Q. Or with Leonard Kaufman of the law firm of Mitchell, Silberburg & Knupp?

A. I don't recall that.

Q. Or with Harold Collins of the law firm he was with then, Wright, Peeler & Garrett?

A. I don't recall any.

Q. You have now stated all the conversations you recall having with any representatives of any

(Deposition of Seymour Simon.)

motion picture distributor with regard to the Paradise Theatre prior to December 4, 1950?

A. Yes.

Q. Now do you recall in December of 1950 or January of 1951 having any conversations with any representatives of any motion picture distributor about the Paradise Theatre playing on availability of 21 days after Los Angeles first run closing?

A. No. I don't recall any such conversations.

Q. Do you recall having had a luncheon meeting with Mr. William Zimmerman of RKO in Los Angeles somewhere in that period of time?

A. Yes. It might have been in February of '51. It might have been in January. I don't believe it was in December.

Q. Do you recall who else was present at that meeting?

A. I believe Walter Branson was present.

Q. Was Mr. Alex Schreiber there?

A. I don't believe so.

Q. Was Mr. Harry Cohen there?

A. I don't believe so.

Q. No one else that you can recall other than the three of you? A. No one else there.

Q. What was said at that meeting?

A. I think it was at the Ambassador Hotel.

Q. What was said at that meeting about the Paradise Theatre?

A. Well, I again asked Mr. Zimmerman to try to work out an arrangement to try some first run

(Deposition of Seymour Simon.)

pictures in the Paradise Theatre, and he said that couldn't be done.

And then I asked him again to license some pictures to the Paradise without bidding on a seven day availability so that they would have an opportunity to get some [1280] pictures in there and show what they could do with them and the extent to which their playing pictures simultaneously with theatres in Inglewood or La Tijera would affect those theatres.

Q. And what did Mr. Zimmerman say in response?

A. Well, he said that he liked Alex Schreiber very much, and he liked me very much, and he would do what he could for both of us, but that it was going to be pretty tough for him to persuade anyone to do that.

And he just didn't think it could be done.

However, he would try.

I think then I might have spoken to him about the possibility of getting pictures into the Paradise on a 14-day availability without bidding at a reasonable film rental so that the Paradise Theatre would have product top-rate. My recollection on that is not very clear.

Q. Do you recall in the latter part of 1950 or the early part of 1951 there came a time when the Paradise Theatre adopted the policy of playing on a 21-day availability consistent with the idea of having a strong double feature and being able to obtain

(Deposition of Seymour Simon.)

the picture at lower film rentals than on the earlier availabilities?

A. With the type of bidding that it was being subjected to, and with the type of bids that were being offered distributors by other theatres, the Paradise didn't have [1281] enough pictures to play on a seven day availability, so they did drop back to a later availability.

Q. Do you recall telling Mr. Zimmerman at any time that the Paradise was going to experiment with a 21 day policy, and that if it were dissatisfied with that policy at any time, you would let him know?

A. No. I believe I told Mr. Zimmerman that they were going to experiment, they had no alternative but to go to that policy of playing pictures later. [1282]

Q. Because of the bidding situation?

A. Because of the bidding situation. And that in order to get pictures to keep the house open, they were going to have to play later pictures.

And I told him that I felt that their film rental demands for pictures on that availability had been pretty high, and if the Paradise was to be able to operate successfully playing pictures that far back, their film rentals ought to be reduced considerably.

Q. Now to refresh your recollection in that regard, do you recall that in November of 1950, under the direction of Mr. Alex Schreiber, a survey of the residents of the Westchester area was made on a house-to-house basis by students of Loyola Univer-

(Deposition of Seymour Simon.)

sity by Mr. Schreiber, in which the question was asked whether the residents of that area would desire to see pictures on an early run, or whether they would desire to see the picture two or three weeks later at a low admission price with a strong double feature. A. I don't recall that.

Q. I take it you recall nothing about the results of the surveys? A. I don't.

Q. Do you recall that the responses to the question asked in that survey indicated an overwhelming preference [1283] on the part of the residents of Westchester for the later availability and at a reduced admission?

A. I don't recall anything about a survey. I don't recall ever having been told that a survey of that type was made. I may have been told that, however. That's almost six years ago.

Q. Well, now, have you told us all that you recall about your luncheon meeting with Mr. Zimmerman and Mr. Branson at the Ambassador Hotel in Los Angeles in January or February of 1951?

A. Yes.

Q. Or all that you recall about any other conversation with Mr. Zimmerman up to the time of that meeting? A. Yes.

Q. Now you mention a 14-day availability without bidding as being something that was mentioned along the line in your discussion with representatives of RKO Radio Pictures, Inc.

I show you now a photostatic copy of a copy of a letter addressed to RKO, bearing signature Para-

(Deposition of Seymour Simon.)

mount Theatre Building Corporation, under date of December 12, 1950, which is Defendants' Exhibit P-15 for identification, and ask you if you recall seeing that letter or a copy of it shortly after the date which it bears or at or about that time. [1284]

A. Yes.

Q. Do you recall whether or not that letter was prepared by you? A. I believe it was.

Q. Does that refresh your recollection in any way as to conversations had with representatives of RKO about the Paradise Theatre in December or thereabouts in 1950? A. It does not.

Q. Turning now to a Columbia Pictures Corporation letter, I show you a letter on letterhead of that company, bearing date January 25, 1951, addressed to Mr. Alex Schreiber, signed, Wayne C. Ball, and ask you if that letter or a copy thereof came to your attention shortly after the date which it bears. A. I do not recall.

Q. Do you recall over what period of time the experiment with the 21-day availability at the Paradise Theatre as a consistent policy continued?

A. I do not.

Q. Does the mention of the Columbia picture 'Born Yesterday,' refresh your recollection in that regard? A. No.

Q. I show you now a group of photostatic copies of letters, each of which I believe are substantially identical in form, except that in each case they relate [1285] to different particular motion pictures.

(Deposition of Seymour Simon.)

They all bear the date March 28, 1951, and are addressed respectively as follows:

To Mr. A. R. Taylor, Defendants' Exhibit C-1 for identification;

Thomas J. Aspel, Jr., Defendants' Exhibit D-38 for identification;

Fred Greenberg, Defendants' Exhibit G-3 for identification;

L. W. Marriott, Defendants' Exhibit I-11 for identification;

Harry C. Cohen, Defendants' Exhibit E-1 for identification;

W. B. Pollard, Defendants' Exhibit D-1 for identification.

I ask you if you recall whether or not you prepared either those letters or a draft substantially similar in form.

A. I do not believe I did.

Q. Do you recall when you last had any conversation with any representative of any motion picture distributor about the Paradise Theatre?

Now in that connection, I would like to limit my question to the time September 18, 1951, which is the date of filing the complaint, so I intend to ask when was [1286] the last time prior to that date that you had any conversation with any representative of any motion picture distributor about the Paradise?

A. Except perhaps for some conversations with Mr. Swerdlow, I believe the last one was a conver-

(Deposition of Seymour Simon.)

sation with Mr. Zimmerman and Mr. Branson in Los Angeles.

Q. Do you recall having some conversations with Mr. Swerdlow thereafter?

A. I don't recall any; I may have had.

Q. You have no distinct recollection at this time? A. I do not.

Q. Apart from your conversation with Mr. Zimmerman about the 21-day availability at the Paradise Theatre, do you recall at any time prior to September 18, 1951, having any conversation with any representative of any motion picture distributor about that availability? A. I do not.

Q. I take it that generally speaking your activity with respect to representing the Paradise Theatre in the conversations with various distributors' representatives ceased at or about the time that Mr. Alioto and Mr. Kendrick were retained on behalf of Paradise Building Corporation, is that correct?

A. Yes.

Q. Are you able to fix the date of that? [1287]

A. I believe it was in the latter part of 1951 or the early part of 1952.

Q. Now I call your attention to the date of filing the complaint herein, which you will note from a copy I show you is September 17, 1951—at least, that is the date on the summons—and ask you if that refreshes your recollection as to when Mr. Alioto and Mr. Kendrick were retained on behalf of the Paradise Theatre Building Corporation.

(Deposition of Seymour Simon.)

A. Well, no, it doesn't. I had nothing to do with retaining them.

I do recall that I had discussed with Mr. Schreiber about the feasibility and desirability of retaining counsel on the West Coast, and we discussed the possibility of retaining Mr. Alioto. But still I have no knowledge as to when Mr. Schreiber retained them.

I had nothing to do with retaining them. And when I say I think they were retained in the latter part of 1951 or the early part of 1952, I may be in error.

Q. If I suggest to you that Mr. Kendrick communicated with me about the Paradise Theatre as early as the latter part of April, 1951, would that refresh your recollection in any way as to when they were retained? A. It might have been. [1288]

Q. It might have been that early?

A. That early, yes. But I don't have any independent recollection, because I did not retain them.

Q. I am afraid I have no way of refreshing your recollection with any documents on that.

Now have you told us at this point all that you remember about any conversations had by you with any representative of any motion picture distributor with regard to the Paradise Theatre at any time prior to September 18, 1951? A. Yes."

Mr. Corinblit: Speaking now as attorney for the plaintiff, we have a few more pages to read but I think this is a good place to break.

The Court: How many pages do you?

(Deposition of Seymour Simon.)

Mr. Corinblit: Thirteen pages.

The Court: Ladies and gentlemen of the jury, we are about to take another recess and again it is my duty to admonish you that you are not to discuss this case with anyone, you are not to allow anyone to discuss it with you, and you are not to formulate or express any opinion as to the rights of the parties until the case has been finally submitted to you.

With that admonition we will now recess until 2:00 [1289] o'clock this afternoon.

(Whereupon, at 12:00 o'clock noon, a recess was had until 2:00 o'clock p.m. of the same day.) [1290]

Tuesday, July 24, 1956, 2:00 p.m.

The Court: Stipulate the jury is present in the box?

Mr. Corinblit: So stipulated.

Mr. Mitchell: Yes.

The Court: You may proceed.

Mr. Corinblit: This is a continuation of the deposition of Mr. Seymour Simon, and we will begin on page 111.

(The reading of the deposition was resumed by counsel, as follows:)

"Q. (By Mr. Johnston): Mr. Simon, you are aware of the fact that in this case I am representing Twentieth Century-Fox Film Corporation, National Theatres, and Fox West Coast Theatres Corporation, are you not?

If you aren't, then I shall state to you that I am.

(Deposition of Seymour Simon.)

A. I wasn't aware of the fact that National Theatres and Fox West Coast Theatres had the same counsel as the distributing company, Twentieth Century-Fox Theatres, in this case.

Q. Well, I will state to you that I am representing in this case those three companies which have been named as defendants.

I simply thought it well to apprise you of whom I [1291] represented, if you weren't aware of that.

A. Well, I know that in the case I had out there involving Markoy Corporation—is that the name of it?

Q. That's right.

A. You represented those defendants.

Q. And I do in this case.

And I might state further, I am examining you pursuant to the provisions of Section 43-B of the Federal Rules. A. What do they provide?

Q. They have to do with the examination of adverse or hostile witnesses.

A. Well, I take exception to calling me an adverse or hostile witness. I haven't shown any hostility in the examination that has gone on so far for a few days.

I think, on the contrary, I have shown a complete willingness to be cooperative and to search my memory back over a period of six years and be as helpful as I could be and gave you all the information I could.

Mr. Westbrook: For the record, I have been proceeding under the same section, but on the basis of

(Deposition of Seymour Simon.)

your being an agent or representative of an adverse party, which I think is what Mr. Johnston refers to.

“Mr. Johnston: That’s exactly what I mean. I don’t mean to state that you have been hostile in the common [1292] parlance of the word. I am simply conducting my examination pursuant to the rules which ascribe the method of examination for the examination of a party or his agent.

The Witness: Well, I certainly don’t look upon myself as a managing agent of the plaintiff corporation.

Mr. Johnston: Well, regardless of how you look upon yourself or how I look upon you, I have made my statement as to the appropriate sections of the Rules that I deem I am conducting this examination under.

Q. Now I take it from your previous testimony, Mr. Simon, that you had at the time of your visit to New York in the latter part of April, 1950, with Mr. Schreiber, no conversation with any representative of Twentieth Century-Fox Film Corporation with respect to the Paradise Theatre?

A. You are asking me whether I did have any?

Q. Yes.

A. The answer is, I don’t recall any.

Q. Do you recall whether you and Mr. Schreiber at the time or at about the time of this visit sought an appointment with any representative of Twentieth Century-Fox Film Corporation?

A. I don’t have any recollection of having done so.

(Deposition of Seymour Simon.)

Whether Mr. Schreiber did, I don't know.

Q. Did you at any time up to the period ending September 1951 have any verbal communication of any character [1293] whatsoever with any representative of Twentieth Century-Fox Film Corporation with respect to the Paradise Theatre?

A. Let me ask the question: What was the name of their exchange manager in Los Angeles during that period?

Q. Well, there was more than one. Clyde Eckert was for a period of time exchange manager, and I think for another period Mr. Alex Harrison was the exchange manager.

And I am not sure—just so I can give you all the facts within my knowledge—I am not sure whether Mr. Morrey Seidman may have temporarily acted as such during the period from 1950 through September, '51.

A. I don't recall any conversations with any representative of Twentieth Century-Fox.

Q. Now did you have any conversations with any representative of Fox West Coast Theatres Corporation at any time up to and including September 1951 with respect to the exhibition of motion pictures at the Paradise Theatre?

A. I had one conversation, but whether it was before or after that September date I am unable to say.

I am inclined to believe it was after that date.

Q. Your best memory at this time is that it took

(Deposition of Seymour Simon.)

place some time after September of 1951, is that right? A. Yes.

Q. Well, so that the record may be complete, will you state with whom you had such a conversation, the persons present, [1294] and what was said?

A. The conversation was with Mr. Charles Skouras.

Q. And who were present in addition to Mr. Skouras and yourself? A. I don't recall.

Q. Do you recall where the conversation took place? A. In his office.

Q. And what was said with respect to the Paradise Theatre at that conversation?

Mr. Westbrook: Before you go into that, just to aid in fixing the time, did that conversation occur during the period when you were in Los Angeles in connection with other legal matters to which we previously referred? [1295]

The Witness: It occurred while I was in Los Angeles in connection with anti-trust action instituted by Markoy Corporation.

Mr. Johnston: Q. Can you place that period now, Mr. Simon, with any more particularity as being before or after September 1951?

A. I believe it was after, because it was at the time that Markoy case was drawing to a close, and I think that was after September 1951.

Q. Now may I ask you again this question, and covering the period from the time of your retention by Mr. Schreiber for the Paradise Building Corporation up to the period through September of 1951:

(Deposition of Seymour Simon.)

Do you recall having any conversation or being present at any conversation with any representative of Fox West Coast Theatres Corporation or National Theatres Corporation with respect to the Paradise Theatre?

A. Other than the one I have mentioned?

Q. Well, I think we have eliminated it as being subsequent to the period in question.

A. I said I wasn't sure. I thought that it was——

Mr. Westbrook: Off the record for a moment.

The Witness: ——but I wasn't sure.

(Discussion had off the record.) [1296]

The Witness: The question, as I recall it, was prior to——

Mr. Johnston: September of 1951.

The Witness: Now I will continue by saying that I won't concede it's eliminated, because I am not sure that that conversation didn't take place prior to the end of September, 1951.

Mr. Johnston: Q. I take it that you placed the conversation in relation to your activities in relation to your activities in concluding a case that has been popularly referred to as the Markoy case?

A. It might not have been at the very end of the case, but it was at a point where settlement negotiations were developing in that case.

Q. Have you any record available here which would enable you to fix the time of that conversation with Mr. Charles Skouras?

A. I do not have them available here in my office.

(Deposition of Seymour Simon.)

Q. Now putting apart the conversation with Charles Skouras, which you have referred to, did you have or were you present at any other conversation with any representative of Fox West Coast Theatres Corporation or National Theatres Corporation with respect to the Paradise Theatre?

A. I don't recall any. [1297]

Q. Did you have any written communication of any sort with Fox West Coast Theatres Corporation or National Theatre Corporation or any representative thereof with respect to the Paradise Theatre from the period of your retention by Mr. Simon?

A. Mr. Schreiber.

Q. Mr. Schreiber, I beg your pardon. Through September 1951.

A. I have no recollection of any such communication.

There was a written communication with Twentieth Century-Fox Film Corporation, but I don't recall any with Fox West Coast or National Theatres.

Q. When were you first retained by Mr. Schreiber for the Paradise Theatre Building Corporation in connection with the Paradise Theatre?

A. Well, it was prior to May, 1950. I don't know how long prior.

Q. Now I show you a copy of a letter dated April 17, 1950, addressed to Twentieth Century-Fox Film Corporation, which I will ask the Reporter to mark as Defendants' Exhibit SS-4 for identification, and ask you if you sent the original of that

(Deposition of Seymour Simon.)

letter to the addressee indicated thereon at about the date it bears? A. I did. [1298]

Q. Now I show you also a copy of a letter bearing date April 28, 1950, and having on it the letterhead of Twentieth Century-Fox Film Corporation, addressed to Mr. Seymour Simon, and apparently sent by A. W. Smith, Jr., which I will ask the Reporter to mark as Defendants' Exhibit SS-5 for identification, and ask you if you received the original of that document? A. Yes.

Q. At the time of your drafting the letter, which has been marked as Defendants' Exhibit SS-4, did you have before you, Mr. Simon, a memorandum or a copy thereof which has been marked as Defendants' Exhibit SS-1? A. I do not recall.

Q. Now, Mr. Simon, I am going to show you Defendants' Exhibit E-1 for identification and ask you if you prepared for transmission to Twentieth Century-Fox Film Corporation a letter similar to, in substance, E-1?

A. That question has already been asked and answered.

Oh, excuse me. Will you read the question?

(The pending question was read.)

Well, I prepared a draft of a letter and delivered it to Mr. Schreiber and instructed him to [1299] send it to the film companies in Los Angeles.

Now, who he sent it to, I did not know at the time.

Q. Do you have any knowledge of his having

(Deposition of Seymour Simon.)

sent such a letter similar in form to E-1 to Twentieth Century-Fox Film Corporation?

A. Have I ever been shown a copy of such a letter addressed to Twentieth Century-Fox?

Q. I know of none in existence.

I am asking for an answer.

A. I have no knowledge; I have no knowledge."

Mr. Corinblit: Speaking now as attorney for the plaintiff, we will not offer anything until over on page 121, beginning with: "While Mr. Westbrook is searching——"

Mr. Johnston: Just a minute, please, Mr. Corinblit.

Mr. Corinblit: Yes.

Mr. Johnston: I think you should read the intervening portion. If you don't, I will feel obliged to read it myself.

The Court: Suppose you read it.

Mr. Corinblit: If that is to be offered, this is a matter of privilege, and therefore we would make an objection on the ground of privilege so your Honor won't have to rule on the question. [1300]

Do you offer that part of the deposition, Mr. Johnston?

Mr. Johnston: I think that should be read, yes. Where did you stop?

Mr. Corinblit: "I have no knowledge; I have no knowledge."

That is at the bottom of page 120.

The Court: Let me see it.

(Deposition of Seymour Simon.)

Mr. Corinblit: The question begins where it is marked, your Honor, right after that question.

(Handing document to the court.)

The Court: The objection is overruled. You may read it.

Mr. Corinblit: Thank you.

Mr. Johnston: Do you want to read it?

Mr. Corinblit: Yes.

(The reading of the deposition was resumed as follows:)

“Q. Did you give Mr. Schreiber any specific instruction with respect to sending such a letter as Defendants’ Exhibit E-1 to Twentieth Century-Fox Film Corporation according to your recollection now?

A. Well, I think you are now going into the area of attorney-client communication, and I think I should refuse to answer that without authority from my client to do so.

Q. I might say, Mr. Simon, that you have already [1301] testified that you made a suggestion to your client with respect to the contents of a proposed letter which I consider would constitute a waiver of any privilege, if one does exist in this particular problem.

Mr. Westbrook: Beyond that, you have just testified that you suggested to him or instructed him, rather, to send it to the film company.

The Witness: I stand by the statement I have made. I am not going to answer that question.

Mr. Johnston: Q. While Mr. Westbrook is

(Deposition of Seymour Simon.)

searching for documents I asked him about, I will show you two letters, one marked Defendants' Exhibit I-2 for identification, and the other one marked Defendants' Exhibit I-1 for identification, and ask you with respect to each of those letters whether you had any part in drafting the letter or a letter similar in form for transmission to the addressee therein indicated. A. I don't recall.

Q. You have no recollection one way or the other whether you had any hand in the drafting of these two exhibits which I have shown you?

A. No. [1302]

Q. Now I show you what has been marked Defendants' Exhibit D-13 for identification and ask you if you drafted or assisted in the drafting of any similar communication addressed to or to be addressed to Twentieth Century-Fox Film Corporation?

A. I drafted this form and sent it out to Mr. Schreiber, or gave it to him if he happened to be here at that time—I don't recall which. But the addressee was blank, as I have testified before. It was a form to be used as a communication with several film companies.

Q. Did you make any suggestion with respect to what film companies a letter in the form of Defendants' Exhibit D-13 should be sent out?

A. Well, I recall that I made a suggestion with regard to RKO, because there were additional paragraphs in the letter that went to RKO.

Q. Other than that, you made no specific sugges-

(Deposition of Seymour Simon.)

tion, I take it, as to what film company this form of letter should be sent? I am referring again to Defendants' Exhibit D-13? A. I cannot recall.

Q. Now, I asked you earlier whether you had any conversation with any representative of Twentieth Century-Fox Film Corporation with respect to the exhibition of pictures at the Paradise Theatre, and I believe your testimony was that you recalled none or did not have any. [1303]

Now I ask you if you were present at any conversation with any representative of Twentieth Century-Fox Film Corporation with respect to the Paradise Theatre?

A. I don't recall being present at any such conversation.

Mr. Johnston: Q. Mr. Simon, during your retention by Mr. Schreiber in connection with Paradise Theatre and throughout the year 1951, did you have or were you present at any conversations or conversation with any exhibitor or exhibitors in the Los Angeles area other than Fox West Coast Theatres Corporation or National Theatres Corporation with respect to the Paradise Theatre? And by that I mean Griffith-Coleman, United Artists theatre circuit. A. What was the first one, who?

Q. Griffith-Coleman or any others. I don't limit it to those two.

A. I was never present at any discussion with Griffith-Coleman or United Artists Theatre Circuit relating to the——

Q. Paradise Theatre.

(Deposition of Seymour Simon.)

A. —Paradise Theatre.

What period did that question cover?

Q. I am covering the period from the time you were retained by Mr. Schreiber or his company, which you place as being some time before May of 1950, up to September of 1951.

A. Except I add to that question: A conversation with [1304] a man whose name I believe was Stein, who is the manager of the United Artists theatre circuit in Los Angeles; except I don't know whether that conversation was before or after that September date.

Q. Do you recall who was present at that conversation in addition to yourself and Mr. Stein?

A. I don't recall that the man's name was Stein. I think there was a Stein.

Q. There was or is a Fred Stein who was connected with the organization?

A. That's right, then. I don't recall who else was present.

Q. And where did that conversation take place?

A. I believe it took place in Mr. Stein's office.

Q. Now is that the only conversation that you can recall that you had with any exhibitor regarding Paradise Theatre from the period of your retention by Mr. Schreiber through September, 1951, assuming that this did occur before September, 1951?

A. With any exhibitor?

Q. Any exhibitor? A. Where?

Q. In the Los Angeles area.

A. I had conversations with exhibitors regard-

(Deposition of Seymour Simon.)

ing the Paradise Theatre and Mr. Schreiber. [1305]

Q. With what exhibitors?

A. My conversations with Mr. Albert Levoy.

Q. When did that conversation take place?

A. I spoke to Mr. Albert Levoy on that subject on many occasions.

Q. Can you place the dates of those occasions?

A. I again think that you are getting into the realm of attorney-client discussions, and for that reason I refuse to answer that question.

Q. Now do you recall discussions with any other exhibitor than the ones you have mentioned on this same topic and during this same period?

A. Well, the other conversation that I previously mentioned with a representative of Fox West Coast, but there, again, I am not sure if it's within the period——

Q. I am referring, Mr. Simon, to ones you have not previously alluded to.

A. No, not that I can recall.

Q. Did you have any conversations——

A. Oh, wait, wait; yes, yes. I had a conversation with Mr. Marco Wolff.

Q. At what time, Mr. Simon?

A. That was in the latter part of 1950.

Q. And who was present at that conversation in addition to yourself and Mr. Marco Wolff? [1306]

A. Mr. Schreiber.

Q. What was said on that occasion?

A. Well, there, again, from my viewpoint, it was a communication between attorney and client.

(Deposition of Seymour Simon.)

Mr. Marco Wolff at that time was acting as an agent for the plaintiff corporation, and we discussed things in which I was acting as counsel for the corporation, and I don't think I ought to go into that.

Q. Now have you given all of the conversations—I should say, have you mentioned the existence of conversations with exhibitors regarding the Paradise Theatre from the period of your retention by Mr. Schreiber through September, 1951?

A. That question is with exhibitors in the Los Angeles area?

Q. In the Los Angeles area, yes.

A. I don't think I know any other exhibitors in the Los Angeles area.

Q. So that your answer to my question would be that you wouldn't have had any such conversations?

A. None that I can recall.

Q. Did you have any conversations with any buying or booking agents for exhibitors in the Los Angeles area about the Paradise Theatre for the period from May of 1950 through September 1951?

A. Not that I can recall.

Mr. Johnston: I have no further questions.

Mr. Corinblit: Speaking now as attorney for the plaintiff, I would first like to mark for identification as plaintiff's exhibit next in order a play-off of Fox West Coast Loyola Theatre from October 1946 to September 1951. I will hand copies to counsel for the purpose of having them checked so that they can stipulate, if they desire to.

The Court: It may be marked for identification.

The Clerk: 53 for identification.

(The exhibit referred to was marked as Plaintiff's Exhibit No. 53 for identification.)

Mr. Corinblit: Also, we will mark for identification at this time a play-off of Paramount pictures from 1945 to September 1951, which we have prepared, and hand copies to counsel so that perhaps we may reach a stipulation on those matters.

The Court: It may be marked for identification only.

The Clerk: 54 for identification.

(The exhibit referred to was marked as Plaintiff's Exhibit No. 54 for identification.)

Mr. Corinblit: For the purpose of the record, let [1308] the record show we served upon counsel a copy of a memorandum which we filed with your Honor yesterday referring to the offer of proof and memorandum of law with respect to the admissibility of evidence as to the Westchester-Inglewood matter.

The Court: The record may so show. [1309]

Mr. Corinblit: The plaintiff will call Mr. Alex Schreiber.

ALEX SCHREIBER

called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

The Clerk: Will you state your full name, please?

The Witness: Alex Schreiber, A-l-e-x.

Direct Examination

Q. (By Mr. Corinblit): Mr. Schreiber, where do you reside?

A. 10776 Wilshire Boulevard, West Los Angeles.

Q. And are you the president of the plaintiff corporation, Paradise Theatres Corporation?

A. I am.

Q. And how long have you held that office?

A. Since we organized the corporation in, I believe——

Q. I think the date is about 1949?

A. I was going to say '49 or '50.

Q. Mr. Schreiber, how long have you been in the theatre business?

A. I have been in the theatre business since I was 18 years old. I started on January 1, 1919.

Q. Will you tell us, Mr. Schreiber, what was the [1310] first theatre that you were connected with in any way? How old were you at the time?

A. The first theatre I was connected with was the Blackstone Theatre in Detroit, Michigan. It was a 288-seat house, downtown at Michigan and Griswold.

I went to work for my brother. That was immediately after the first World War ended.

(Testimony of Alex Schreiber.)

Q. And how long were you connected with that theatre?

A. Until 1925, some time in 1925.

Q. And in your connection with that theatre, what duties and services did you perform?

A. Well, I was hired to be a doorman, be assistant manager, cashier, bookkeeper, assistant janitor, candy boy, poster clerk.

I repaired the seats; I repaired the carpets when they needed to be repaired.

I went to the film building to pick up the advertising or deliver advertising. I went to the bank and did anything and everything that had to be done around the theatre.

Q. How about acting as assistant operator on the machines?

A. Well, when the operator wanted to go out for lunch or the restroom, I went up and handled the projection equipment.

Q. And after that theatre, the Blackstone Theatre which [1311] you said was 288-seat theatre in Detroit, what other theatres were you connected with in any way in the city of Los Angeles, giving us the approximate dates?

A. Well, from about 1919 to about 1922 or '23 my brother made a lease on both the Victoria and the Wolverine Theatre on Michigan Avenue near the depot.

We operated that theatre for a short period of time, and then we made a deal to lease the Frontemac Theatre on Harper and Frontemac. That was

(Testimony of Alex Schreiber.)

a neighborhood theatre. That was in about 1924, I believe that was, and then in 1925 when I left the employment of my brother, I went to the Frontemac Theatre and opened that theatre myself.

Q. Thereafter what were some of the other theatres that you were connected with?

A. After the Frontemac Theatre I made a lease on the Plaza Theatre on East Jefferson, also a neighborhood theatre of about 750 seats.

After the Plaza Theatre I made a—I bought a half interest with Mr. John Nebus in the Dawn Theatre on Gratiot Avenue.

Mr. Nebus took sick and he was looking for somebody to run his theatre, and he preferred to sell an interest in the theatre.

I bought that interest from Mr. Nebus with the understanding that I would have full charge of setting the policy, [1312] remodeling the theatre and doing whatever was necessary to make it a success.

After exactly one year Mr. Nebus felt a lot better and he wanted to get back in active theatre business, and I disposed of my 50 per cent to Mr. Nebus.

After the Dawn Theatre I believe I became interested in the Capitol Theatre on West Berner Highway. They called it Spring Wells. That was also a neighborhood theatre of about 900 seats.

I believe we made that deal in the end of 1931, during the depression, and we remodeled that thea-

(Testimony of Alex Schreiber.)

tre and we opened in September, I believe September 2, 1932.

And then I believe I disposed of my interest in the Plaza Theatre and the Dawn Theatre and the Frontemac Theatre and then I remained with the Capitol Theatre and the Blackstone Theatre and the Loop Theatre. I forgot to mention the Loop Theatre. I acquired that theatre—that was about 530 seats in downtown Detroit at Cass and Michigan. I acquired the lease on that theatre about 1927 and we opened on February 18, I believe, 1928.

And after we had the Capitol and the Loop Theatres—they were the two theatres I remained with and then after that I believe my associates and myself made a lease in 1935 for the Rialto Theatre in Flint. That was another 530 some odd seat theatre downtown Flint. [1313]

After that theatre, the same four associates of mine in the Rialto Theatre, Flint, we made a lease in the Rialto Theatre, Three Rivers, Michigan. That was a small town with about three or four thousand people, maybe six thousand people. That was less than 500 seats, I believe. It was a small theatre in this town. The other theatre in the town was a Butterfield theatre. There was just the two theatres.

Then made another lease, my associates and I did, in the Nortown Theatre, Flint. That was a neighborhood theatre of 1200 seats in Flint.

Then we made a lease, my same associates and myself, in the Ritz Theatre in Flint.

Prior to this '35, I made a lease on the Times

(Testimony of Alex Schreiber.)

Square Theatre in Detroit, which was directly across the street from our Loop Theatre, which was a small theatre. We opened that theatre on October 19, 1929. We had that theatre—well, we had that theatre about less than two years. We opened it up just—we opened it up, I think, October 9 or October 10, and October 13, I think, was the stock market crash. So from that day on we had a lot of trouble with that theatre. It was a brand new theatre, big theatre, big expenses, and we just couldn't keep it open. So we lost that theatre. Turned it back to the landlord in, I believe it was, 1931.

Then in 1936, I believe it was, two of my [1314] associates made a deal for the Center Theatre on Woodward and the Boulevard, which was formerly a newsreel theatre, Trans-Lux Theatre. They operated it for a while, and they wanted me to join with them, so I took an interest in that theatre.

Then that created hard feelings with the people that had the theatre across the street, and they built a theatre near this Capitol Theatre, and then they bought us out of the Capitol Theatre on Vernor Highway, and we bought them out in the Norwood Theatre, which was across from the Center. In other words, rather than scrap around with one another, they took one theatre and we took the other. It was a friendly relationship.

After that, in about 1941, I made a deal on the Strand Theatre, Cincinnati. That was downtown Cincinnati. About 1300 seats.

(Testimony of Alex Schreiber.)

In addition to that theatre, we made a lease, my associates and myself made a lease on the Lancaster Theatre in River Rouge, and the Grande Theatre in River Rouge. We also made a lease on the Del Rey Theatre in 1941 in River Rouge. That was around 600 seats. The Grande was around 1,000 seats. The Lancaster Theatre was about 1800 seats. The Lancaster is in River Rouge, a suburb of Detroit. That was 1800 seats. Then we built—no, we didn't. We leased from my associates, one of my associates' brother-in-law, the Rouge Theatre, a 900 seat theatre in River Rouge. [1315]

Then two of my other associates leased two theatres in Mount Clemens, Michigan, which is a suburb of Detroit, 25 miles from the city hall of Detroit. We took an interest in those two theatres in Mount Clemens.

Later on, a year or two—no, several years later we built, my associates and myself built the Gratiot Drive-In Theatre. That was a drive-in theatre with a capacity of around 1,000 or 1100 automobiles.

Then a couple of years after that, members of my family and some relatives, and I believe two outside people, and myself, we leased the ground and built the Grand River Drive-In Theatre out Grand River, out near Farmington, a suburb of Detroit. That was also around 1,000, 1100 cars.

After the two drive-ins—prior to the two drive-ins, in 1936, we bought an automobile agency in Trenton, Michigan, that is about 25 miles from De-

(Testimony of Alex Schreiber.)

troit, and we converted the garage into a 700 seat theatre.

In about 1938, my associates and I acquired an interest—a lease, rather, of the Rialto Theatre in Wyandotte, another suburb of Detroit, of less than 600 seats.

Then we acquired an interest in the Majestic Theatre in Wyandotte, which was also about seven or eight hundred seats, I believe, and we built a 1400 seat theatre in Wyandotte, so that gave us three theatres in Wyandotte.

Of course, we disposed of interests in the [1316] Strand Theatre to the New York Tele-News people. They bought an interest and ran the theatre, and then they bought us out. They took full possession of that theatre in Cincinnati.

Then I became interested with one of my associates and few other people that I knew in buying the Lyceum Theatre and office building in Minneapolis. This was a legitimate theatre where they played legitimate stage shows, and we tried to get movies first run, because it was practically a downtown theatre, in between the stage show policy in Minneapolis. We recently sold the theatre and building in Minneapolis. We don't have that theatre any more, or the office building.

Q. Let me stop you there, Mr. Schreiber. With respect to the theatres which from time to time you have had an interest in, what in general were your

(Testimony of Alex Schreiber.)

duties and responsibilities, that is, what did you do with respect to those theatres?

A. Well, in all those theatres I was responsible for the policy, the buying and supervising of buying pictures, booking the pictures, hiring the important key people of each theatre, setting up the advertising schedule for each theatre, buying equipment, in charge of remodeling the theatres, buying whatever necessary carpets or booth equipment or theatre seats or handling the decoration. Of course, I had a general manager with me and I had [1317] several supervisors with me, but everybody worked under me, with the exception of Mount Clemens. Two of my associates, they were in charge of Mount Clemens, but I counseled with them. We had quite a few meetings together deciding the policy and purchasing of pictures and remodeling of theatres.

In the Nortown Theatre in Flint, Doc Eisman, the associate who had 50 per cent interest, he took charge of the theatre at Flint. We governed and watched the booking and buying of the pictures in Detroit, because Flint was served pictures from Detroit. [1318]

Q. All right. Now, just to get this matter out of the way. During the period from September or August of 1950 to September 1951, the period that you operated the Paradise Theatre, in what theatres in Detroit did you continue to have an interest during that period. Do you remember that?

A. I didn't have very many theatres left then.

(Testimony of Alex Schreiber.)

Q. Now, when did you first become interested in coming to Los Angeles for the purpose of going into the theatre business?

A. Well, the first trip to California was made with my wife and a doctor friend. I believe that was in 1941.

My wife wasn't well and the doctor recommended that I take my wife for a long drive and go to California.

My wife was a little nervous about making that long distance without the help of a doctor, and the doctor wanted a vacation, so he said he would go along with us. And then she had nothing to fear, so we drove to California.

And when Mrs. Schreiber came here, during that period she felt quite, much better and quite relieved that she had found a place where she was at ease.

And then each year after 1940 we came West either once or twice a year, because she felt so much better on the West Coast than she did in Detroit.

Q. Now when, calling your attention to the period around 1946 or '47, what happened then with respect to your [1319] interest in coming to Los Angeles or going into business in this area?

A. Well, it was around '46 or '47. Mrs. Schreiber said that she felt so much better when she would visit the West—we made trips to—we stopped off in Phoenix and stopped off in Tucson for a short time—Palm Springs and Los Angeles, and she felt the climate in Los Angeles was much better for her.

(Testimony of Alex Schreiber.)

We had some friends that we knew from Detroit living in Los Angeles and she told me that she wanted to move to California, that she felt her health was very important and she just wanted to move from Detroit and come to California. She preferred Los Angeles.

So in 1947 I started to look around for locations for theatres on the suggestion of friends of mine that I had known in Detroit, figuring that if I did move to California, naturally, the only business I knew was the theatre business. I wanted to get interested in some theatres to make a living and to continue my livelihood, so I started looking for locations with the help of several friends of mine from Detroit and friends that I had met here through the Detroit acquaintances.

Q. Now, would you describe for us, Mr. Schreiber, when you became interested in coming to this area, the areas surrounding the city of Los Angeles—the Los Angeles [1320] area that you visited, that you drove around and investigated, will you describe those for us?

A. Well, the friend of mine from Detroit and a friend of his whom he introduced me to, started to show me all the areas that they thought would make good theatre locations and thought that I would be interested.

They drove me in downtown Los Angeles. We went to Hollywood. We went up and down Hollywood Boulevard. We went to the Wilshire area. We

(Testimony of Alex Schreiber.)

drove out to Westchester. We drove to Culver City.

We drove to Santa Monica. We went to Hermosa Beach, Manhattan Beach, Redondo Beach.

We went into Hawthorne. We went into Inglewood. We went into the Valley.

Q. You are talking about the San Fernando Valley?

A. The San Fernando Valley. Up Laurel Canyon Boulevard and went up Lankershim Boulevard.

We went to Burbank. We went to Encino. We went to Overhill and Slauson area and I believe—I am looking at the map. It is quite a distance. I am trying to recognize some of the areas, but I think I have pretty well covered the majority of the areas that I had examined with these friends.

Q. How about Pacific Palisades?

A. Yes, I did. I went up there several times with my [1321] friends from Detroit and once I believe with Mr. Reeves Espee, who was contemplating building a theatre in Palisades because he had a location and he wanted my opinion whether I thought that location would be a good location for a theatre.

That was prior to the building of the Bay Theatre that is now operating in Pacific Palisades.

Q. Now, who were the people and what were their—what kind of background did they have? What were they that you counseled with with respect to examining possible theatre locations? Just give us their names and who they were.

(Testimony of Alex Schreiber.)

A. Well, Sam Decker was the man that I had known from Detroit. He operated an independent distribution office for independent pictures—those small pictures that these other men that were up here on the stand testified to—small pictures. He had a branch office or a franchise to operate independent pictures.

Mr. Decker used to be a booker for Pathe Film in Detroit, and Mr. Decker introduced me to a man named Bud Silverman. Bud Silverman was a theatre owner that was operating a theatre in Santa Monica and I believe Mr. Silverman told me at one time he worked or, he was associated with Warner Bros. in Ohio. I just can't recall. It may have been Findlay, Ohio. I am not sure. It was a [1322] small town in Ohio. He either worked for Warner Bros. or was associated with them.

Mr. Decker and Mr. Silverman took me to practically all of these places and they made recommendations.

I remember also at one time driving out with Jack Broder. Jack Broder is a former Detroit theatre operator who moved here and who secured at a later date the Real Art Pictures, which were the re-issues of Universal Pictures over a period of ten years.

He made some sort of tie-up with Universal to release—to release, re-release all of the Universal Pictures that were made for a period of ten years. And I also spoke to Mr. Joe Baley, who was op-

(Testimony of Alex Schreiber.)

erating a theatre on Hollywood Boulevard, who formerly was my manager at the Loop Theatre in Detroit.

And then there was a Mr. Bill Flemion who was also an independent distributor formerly from Detroit, that was associated in the same offices with Mr. Decker.

Q. Now, did you examine particularly the area known as the Westchester area—that is, did you finally come to examine that area?

A. I did. I made quite a number of trips out there. I would say that I made at least four trips prior to buying the property that the Paradise Theatre is on, with Mr. Silverman and Mr. Decker.

Q. And did you discuss with anyone at that time the business development in that area and what was happening there in terms of growth and development?

A. Yes. I talked to Mr. Decker and Mr. Silverman about that. They insisted——

Mr. Mitchell: Can we eliminate the hearsay conversations, your Honor? I object to conversations with Mr. Decker and Mr. Silverman on the ground they are hearsay.

The Court: You haven't objected up to this time.

Mr. Mitchell: That is right. He hasn't started to tell what they said. He has just been going around the community and no harm in that, but when he comes to telling what other people say, it is hearsay.

(Testimony of Alex Schreiber.)

The Court: You may object to hearsay statements.

Mr. Corinblit: This is only for the purpose of showing the background of his investigation.

The Court: That may be true, but the hearsay rule still applies.

Mr. Corinblit: All right, your Honor.

Q. Now, if you will just tell me, Mr. Schreiber, just anyone else to whom you talked about the business development and not what they said to you, because Mr. Mitchell has objected to that as being hearsay. Just whom you talked to about the business development in the Westchester area. [1324]

A. Not with Mr. Decker?

Q. Other than Mr. Decker. Was there anyone else?

A. There was Mr. Silverman who was along with Mr. Decker.

Q. Anyone else connected with the real estate development in that area?

A. Yes, Mr. Hayden Worthington who was in charge of the real estate for the Frank Ayers & Sons, developers of Westchester.

Q. Now, talking about what you saw and not what anyone told you, what did you observe concerning the business development in the Westchester district?

A. On several occasions I drove out in the evening and I watched the business at the Loyola Theatre from the curb, parked in my car. I noticed that

(Testimony of Alex Schreiber.)

they were doing a very big business. I noticed that they were playing pictures two weeks and three weeks—the same program.

I also went out on a Saturday and Sunday afternoon or either one of those days, and I watched the business that the Loyola Theatre was doing as far as children were concerned at the matinees.

I also, in making an investigation of that area, stopped at gasoline stations—stopped children—stopped at gasoline stations and inquired if there were any theatres in that particular locality where that particular gasoline [1325] attendant went to the movies.

I also stopped in the drug stores and inquired from the clerks about the theatre, the Loyola Theatre, and where they go to the movies.

I stopped children near the schools and asked them what theatres they go to on Saturday or Sunday matinee. I made a pretty thorough check of Westchester and in talking to Mr. Worthington he told me—— [1326]

Mr. Mitchell: Wait a minute.

The Court: You can't testify to what people told you. Just testify what you did. You can't testify to what people told you.

Q. (By Mr. Corinblit): Just leaving for a minute your examination directly of the theatre business, that is the Loyola particularly, what did you observe as far as what you saw with respect to other business development in the Westchester area?

(Testimony of Alex Schreiber.)

A. Well, I circled around in my car, and I don't know whether I took Mrs. Schreiber with me or not, but I did circle around with my—no, not my car, with Mr. Decker in his car, or if I had rented a car, which I did many times when I came to Los Angeles, I rented an automobile, and I went up and down the side streets of Westchester, Sepulveda Boulevard, and I went over in the area where they were putting on the new tract homes, and I noticed that the whole area was growing very fast, that it had a lot of new homes there, homes that are typical homes of people that would go to theatres.

I went around the Loyola College. I was pleasantly surprised at the size of it. I drove around to the various schools. At times I was around a school when they had a recess period or lunch period, and I was convinced there were a lot of children around there, and children usually make the theatre business, because when children want to go to [1327] to the show, they take their parents with them.

The Court: What about the business district? What did you notice about the business district?

The Witness: The business district there, I went into Thrifty Drug Store and they were doing a very good business. Of course, you say I can't testify to what Mr. Worthington told me about the business.

The Court: No. How many business establishments were down there?

The Witness: There was the Loyola Theatre at Manchester and Sepulveda.

(Testimony of Alex Schreiber.)

They were building a restaurant called, I believe, the Virginia Boys Restaurant, that was being built.

There was the Security National Bank there. There was a children's store, several children's stores, several ladies' stores. In fact, I know distinctly Joel's Department Store was there, because a lady we knew from Detroit was working there.

On the opposite side of the street there was an announcement that a big department store was going to go up there on the corner of La Tijera and Sepulveda. There was the Westchester Food Market. They were building a big, supposed to be on the order of the Farmers Market, at the southwest corner of Will Rogers and Sepulveda.

Then there was a gas station down at the far end of [1328] the business area.

I believe that's all the business property there was at that time.

Q. (By Mr. Corinblit): This time you are talking about, Mr. Schreiber, is 1947, 1946 and 1947, when you were investigating, is that right?

A. The end of 1946 and 1947, yes.

Q. Now, I take it you made some inquiry as to what the prospects were for other businesses coming into the area, is that right, that is, what the plans were?

A. Yes. I went down and noticed all the factories down at Century Boulevard, from there north and from there south. I knew if those factories were there, there was a lot of people working there, and if they were working there, they lived near these

(Testimony of Alex Schreiber.)

factories. They would all be future patrons of a theatre.

Q. Finally there came a time, did there not, when you purchased the land upon which the Paradise Theatre is built, is that correct?

A. That's right.

Q. Now, after you bought the land—who was the seller of that land?

A. I bought the corner—there was two pieces. The corner, I believe, was a 100 foot parcel, and the next was 50 feet. That 150 foot parcel I bought from Mr. Worthington, [1329] who represented the Ayers people, and I believe the property belonged to an oil company and the Frank Ayers. I think it was the Superior Oil and the Frank Ayers people. I think they owned the property together.

Q. Was Los Angeles Extension Company connected with that? A. That's right.

The Court: When was it your purchased this property?

The Witness: I made a deposit the early part of 1947.

The Court: Do you remember the date of the deed?

The Witness: The deed, I believe, is September 1947.

Q. (By Mr. Corinblit): Now, subsequently, after you acquired the 150 feet on which the Paradise is built, did you also acquire some property adjoining that Paradise property?

(Testimony of Alex Schreiber.)

A. I did. After I made arrangements to buy the 150 feet, there was another piece of property next door, south of this 150 feet, of 100 feet that was owned by a Mr. Dizik and his brother-in-law, and when I got back to Detroit, I believe I called or wrote Mr. Norman Scheinman, that was the judge's brother. I either wrote him or called him to contact Mr. Worthington and make arrangements to buy the next 100 feet, because I felt that if we built this beautiful theatre I had in mind we would build, that would increase the value of the [1330] property next to that, and I thought by our efforts in building a beautiful theatre, if it would increase the value of the lot next to it, it would be good business to buy the lot next to it, so we bought the 100 feet.

I remember next to that 100 feet there was a real estate office and—I think it was—no, there was two small buildings. One was a real estate office owned by McCarthy Realty Company, and the other store that was in that building was vacant. It was a small store. So there was just this 100 feet available next to our property. On the other side of this real estate office, there was a vacant lot and then the Foster Freeze Ice Cream place and a gas station, and that took to the end of the business section of Westchester.

The Court: Ladies and gentlemen of the jury, we are about to take another recess. Again it is my duty to admonish you you are not to discuss this case with anyone, you are not to allow anyone to discuss it with you, and you are not to formulate or express

(Testimony of Alex Schreiber.)

any opinion as to the rights of the parties until this case has been finally submitted to you.

With that admonition, we will now recess until 15 minutes after 3:00.

(Recess.) [1331]

The Court: Do you stipulate the jury are present and in the jury box?

Mr. Corinblit: So stipulated.

Mr. Johnston: Yes, your Honor.

Mr. Corinblit: You may proceed.

Q. (By Mr. Corinblit): Mr. Schreiber, I think at this point perhaps—well, I will go on.

After you furnished the—strike that. After you purchased the property where the Paradise Theatre Building now stands, did you thereafter discuss the matter of purchasing—did you discuss the matter of erecting a theatre with an architect? Did you get an architect to draw plans for you?

A. Yes. When I went back to Detroit I spoke to Mr. Rogvoy (phonetic), an architect in Detroit, who did theatre remodeling and built several theatres in Detroit; whether he would make a trip to Los Angeles and look over this area and let me know whether he would be able to do the plans and design the building and make arrangements to build the theatre for me.

The Court: Mr. Corinblit, there is no dispute in this case that Mr. Schreiber bought a location for a theatre. There is no dispute that he built the theatre.

(Testimony of Alex Schreiber.)

I don't presume there is any dispute that it is a beautiful theatre. [1332]

Mr. Mitchell: Right.

The Court: Now, why not proceed? Why go into all these details? It has nothing to do with this case except that the theatre was beautiful.

This is a question dealing with the distributors. It is not a question dealing with who the architect was or how much the theatre cost.

Mr. Corinblit: Well, your Honor, in that regard perhaps I am wrong in interpreting the kind of stipulation that we are all willing to enter into—that is, we think the Paradise Theatre is a beautiful theatre. We think it has all the finest available equipment, furnishings. We think it was a beautiful theatre in which to see a picture. It had everything that you had to have for that purpose.

If we can get a stipulation to that, then I don't have a minute's hesitation in going on.

The Court: Won't you stipulate it is as good a theatre as the Loyola, as nice a theatre as the Loyola.

Mr. Mitchell: All I know is—I have never been in the Loyola. I have never been in the Paradise. All I know is what the witnesses said and what Mr. Corinblit said about the theatre is all true, it is a beautiful theatre, properly equipped and I can't compare it with the Loyola because I don't know, but it is a beautiful theatre and properly equipped.

Mr. Corinblit: Does that go for you, Mr. Johnston? [1333]

(Testimony of Alex Schreiber.)

Mr. Johnston: It certainly does.

Mr. Corinblit: All right.

Q. (By Mr. Corinblit): Now, there are a couple of things, because of some discussion that we had from Mr. Pirosh about some things about the Chinese Theatre. There is only one small element of the Paradise Theatre I would like to have Mr. Schreiber tell us about in the light of that stipulation, and that is, you have in the Paradise Theatre, don't you, Mr. Schreiber, something that you call "Academy Award Board," is that right, some special kind of arrangement there that people are supposed to see.

Will you describe that for the jury very briefly, because it is not directly in point?

The Witness: Is that all right?

The Court: Go ahead.

The Witness: We have in our theatre what we call the "Academy Award Display" that we went to quite a big expense and time in assembling and installing on the rear wall of our theatre, which shows, since the beginning of the Academy Awards in 1927, all the pictures each year that received the Academy Award; the male star that received the Oscar for best acting; the female star that received the Oscar for the best actress for that year, the best director, the best picture, and other highlights of the Academy Awards from 1927 up to 1955. [1334]

We keep that display up to date. And in addition, the awards that were given to the other people by the Academy Award Society for the best black and

(Testimony of Alex Schreiber.)

white, the best color, and the best two-reeler and best newsreel, best documentary, et cetera.

We have a separate display of that giving those people the honors that they deserve, plus in our entrance court we have in our flagstone entrance a bronze plaque for each year starting with the 49th year when we opened, cemented in the flagstone with a bronze plaque giving the name of the same male star, female star and the name of the picture that won the Academy Award. And each year we put in that flagstone entrance court this bronze plaque which would be similar to what Mr. Pirosh or Mr. Zabel said about what they have at the Grauman's Chinese insofar as footprints or fingerprints or shoeprints in front of the Chinese Theatre. We have ours in bronze plaques. [1335]

Q. Mr. Schreiber, I will show you an exhibit which has been marked Plaintiff's Exhibit 45-D-1 and ask you if you will identify this photograph.

Mr. Mitchell: Isn't that a drawing?

Mr. Corinblit: Yes.

Q. If you will identify this drawing and state who made it and at what time.

A. This drawing was prepared by Arthur Froehlich in association with Mr. Ted Rogvoy from Detroit. I believe the first one Ted Rogvoy drew was a suggestion, and from that suggestion Mr. Froehlich made his drawing.

Q. That was approximately when?

A. That was in 1948.

Q. Without again going into detail, I show you

(Testimony of Alex Schreiber.)

a group of documents which have not been marked heretofore, but they have been shown to counsel, a group of photographs, and ask you if you can identify these photographs as being photographs of the interior of the Paradise Theatre and the exterior.

A. This first photograph is——

Q. You needn't describe them all, Mr. Schreiber. Just examine them to state if they are photographs of the Paradise Theatre.

A. Yes, this is one and this is a photograph, and this is the interior. This is our Academy Award display. This is [1336] a close-up of six years of display. This is our candy stand. This is our foyer. This is our lobby. This is the lobby and foyer combination. These are all duplicates, with the exception of this one, which is a close-up of several other years of Academy Awards.

Mr. Corinblit: We will first offer in evidence, your Honor, the group of photographs which we will have marked for identification.

Mr. Mitchell: We don't have any objection to the pictures.

Mr. Johnston: But there are some statements attached to the photographs which we think should be removed. I have no objection to the photographs.

Mr. Mitchell: I have no objection to the photographs either, but the other should be removed.

Mr. Johnston: Just take off the statements.

The Court: The photographs may be admitted in evidence.

The Clerk: 45-D-2.

(Testimony of Alex Schreiber.)

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit 45-D-2.)

Mr. Corinblit: I would like to offer in evidence 45-D-1, which is the drawing.

Mr. Mitchell: Let me see the drawing just a minute.

The Court: What difference does it make? You have [1337] got pictures of the theatre. What difference does it make?

Mr. Mitchell: I think the drawing is in the super style, your Honor. Perhaps it would be better to have just the photographs.

The Court: I think the photographs are ample.

Mr. Corinblit: We will withdraw the offer, your Honor.

Q. Now, Mr. Schreiber, just to wrap this point up so that we can have it established, can you state for the jury the total cost of the building and the total cost of the equipment and the total cost to the corporation of the land? Give us those figures, please.

Mr. Johnston: Your Honor, we will object to that as being outside the issues involved in this lawsuit. We have entered into an agreement on the physical structure.

The Court: Overruled. He can answer the question faster than you can argue about it.

The Witness: The corporation paid \$122,400 for the land that the theatre is situated on. We paid approximately, the corporation paid to the contractor

(Testimony of Alex Schreiber.)

approximately \$245,000 or \$250,000 to build the building, and we put in, in seats, carpets, the finest RCA sound equipment——

Q. (By Mr. Corinblit): Just the figures, Mr. Schreiber.

A. Approximately \$75,000. That would total around \$450,000, I believe. [1338]

Q. Incidentally, with respect to that land cost, the land cost to the corporation was an increased land cost. It isn't what you paid for it, is it, individually?

A. I paid less than that, but the value of the land was given to me by the Ayers Company, and I put it in for what the Ayers Company said it was worth, because in order to get the mortgage, we had to state what the land cost was or the value of the land.

Q. The pictures show the theatre already built, but there are some intervening events, Mr. Schreiber, we have got to go into.

After you had acquired an architect, after you had plans and so forth, did you discuss the matter of the Paradise Theatre and the matter of pictures with Mr. Joseph Schenck? Did you have such a discussion?

A. Mr. Joe Schenck?

Q. Yes. A. I did.

Q. Will you state when that discussion took place? A. March 15, 1949.

Q. All right. Would you tell us what was said in that conversation?

(Testimony of Alex Schreiber.)

Mr. Johnston: I object to that on the ground it is incompetent, irrelevant, immaterial, hearsay.

The Court: Let's lay a foundation, where the conversation [1339] took place, who was present.

Mr. Corinblit: Yes, sir.

The Court: And what connections, if any, Mr. Schenck had with any of the defendants at that particular time.

Mr. Corinblit: All right, your Honor. I think we have a pretty complete record on that from the witnesses.

The Court: That may be perfectly true, but let's tell the jury. Let's not hide it from the jury.

Mr. Corinblit: Very well.

Q. Mr. Schreiber, will you state when the conversation took place?

A. The conversation took place on March 15, 1949, somewhere around 1:30, 2:00 o'clock in the afternoon, at Mr. Schenck's office in Twentieth Century-Fox Studios on Pico Boulevard in Los Angeles. The appointment was arranged for by Mr. Epstein, who was an employee of the Fox West Coast Theatres. He made the appointment for me to meet with Mr. Schenck.

Q. Turning to Mr. Joseph Schenck, at that time what connection did he have with Twentieth Century-Fox?

A. I understood Mr. Schenck to be in full charge of the Fox Studios, Twentieth Century-Fox Studios, and he also, I understood, at that time was

(Testimony of Alex Schreiber.)

president and one of the big men of United Artists Theatres Circuit. [1340]

Q. United Artists Theatres Circuit, as has been testified to in this case, was a corporation which in 1949 had joint interests with Fox in the Egyptian Theatre on Hollywood Boulevard, the United Artists Theatre downtown, the Ritz Theatre on Wilshire Boulevard, is that correct?

A. I understood he was the head of the United Artists, and they had a big chain of theatres.

Q. Now, in addition to Mr. Epstein, an employee of Fox West Coast, and Mr. Schenck, who else was present at that meeting with Mr. Schenck on March 15, 1949?

A. Mr. Pat Di Cicco, who was supposed to be, or I understood to be the general manager of the United Artists Theatres Circuit in the Los Angeles area, or over the whole United States or the whole state of California circuit. He was the No. 1 man under Mr. Schenck and under George Skouras of United Artists Theatres Circuit. [1341]

Q. All right. Now, will you tell me what was said by you and what was said by Mr. Schenck?

Mr. Johnston: I am going to object to that as being immaterial to the issues involved in this lawsuit. And I think a voir dire examination of Mr. Schreiber on this subject should be conducted outside of the presence of the jury.

The Court: Now, give me your reasons why you think it doesn't apply to this case.

Mr. Johnston: Your Honor, stated simply, it is

(Testimony of Alex Schreiber.)

this. Mr. Schenck was acting on that occasion on behalf of United Artists Theatres Circuit.

The Court: I don't know. He was also connected with Fox, was he not?

Mr. Johnston: He had a connection with Fox. I don't deny that in any respect whatsoever, but he was not acting for Fox and Mr. Schreiber's testimony in his deposition in this case shows clearly that Mr. Schenck was acting for United Artists Theatres Circuit and not for Fox.

And in that connection I would like to refer the court to a memorandum that has been filed by the defendants——

The Court: I have read all your memorandums.

Mr. Johnston: And there is in that memorandum a clear indication of Mr. Schenck sole capacity at that meeting and that indication is that it was on behalf of United Artists [1342] Theatres Circuit. For that reason I say that the conversation with him is immaterial. It is incompetent. It has no bearing on the issues of this case and does not tend to prove or disprove any of the issues involved herein.

The Court: Mr. Mitchell, do you have an objection?

Mr. Mitchell: So far as the defendants I represent, of course, Mr. Schenck has nothing to do with Warners or Loew's or Universal or Paramount, and as to them it is hearsay. And since it occurred prior to the time alleged in the complaint that this conspiracy took place, they can't be involved as co-conspirators, and in matters that are not alleged to

(Testimony of Alex Schreiber.)

have taken place until 1950, September 17, 1950, so it is incompetent as to them and also immaterial.

The Court: United Artists is a defendant in this case?

Mr. Mitchell: No, sir. You dismissed United Artists and that isn't United Artists Theatres Circuit.

Mr. Johnston: It is a different company.

Mr. Mitchell: You see, there are two United Artists, as your Honor remembers. There is a United Artists Distributing Company which distributes film for independents or did, various independent units of producers who would produce a picture and then United Artists would distribute it, just like Paramount distributes its own pictures and Loew's distributes its own pictures and so on. And then also there is another company called United Artists Theatres [1343] Circuit. There is no connection. They both have the same name "United Artists" in it, but there is no connection and that company owned theatres,—the ones that Mr. Corinblit mentioned and various others including United Artists Theatre in Inglewood and those theatres at the time prior to this conspiracy were operated by Fox West Coast, which operation terminated, so the evidence is hearsay in the neighborhood of the first of 1950, so that United Artists Distributing Company was dismissed out of this case and is not a party.

United Artists Theatres Circuit never was a party and it is not alleged to be a party to any conspiracy. So, as to my defendants I think it is incompetent, irrelevant and immaterial.

(Testimony of Alex Schreiber.)

The Court: Is there any other objection?

Mr. Johnston: Your Honor, I should like, if I may, to call the attention of the court to the deposition of Max Schreiber, Mr. Alex Schreiber's son, who was allegedly present at the time of this meeting, and who is also an officer of the plaintiff corporation, with respect to the capacity in which Mr. Schenck was acting at the time. If I may hand this up to the court——

The Court: No, I don't care to see it.

Mr. Johnston: Or I will read it, if it makes no difference.

The Court: I don't care for you to read it.

Ladies and gentlemen of the jury, we are coming to a question that may be difficult to determine, and that is whether it is a question of fact or a question of law.

If it is a question of law you have no concern with it at all. If it is a question of fact, it is your duty to determine the facts. It is not the court's duty to determine the facts.

A contention has arisen now that Mr. Schenck in making these statements, was speaking only as a representative of United Artists Theatres Circuit and wasn't speaking as a representative of Fox.

I think that is a question of fact for you to determine and not for this court to determine whether or not statements he made were applicable to Fox.

Now, there is a general rule known to those familiar with the law as the "hearsay rule." The hearsay rule is this. A party cannot testify to a conver-

(Testimony of Alex Schreiber.)

sation that took place unless the other parties were present. Otherwise, that would be hearsay.

Now, Mr. Schenck, if he speaks for Fox it is hearsay probably so far as the other defendants are concerned, ordinarily. In other words, Mr. Schenck might be able to make statements that are very detrimental to Fox, but those same statements might not be attributable to Warner Bros. or applicable to Warner Bros. or Paramount because they would [1345] be hearsay as to Warner Bros. and Paramount.

Now, there is one exception to this rule. You know in law we have a rule and then we have a multitude of exceptions and the exceptions many times are much bigger than the rule itself.

So, here is the exception. If there is a conspiracy, if there is a conspiracy and Fox is a part of that conspiracy, then the statements of one conspirator may be held as against all the conspirators. That is an exception to the hearsay rule.

Now, the main thing that you are going to determine in this case is, was there a conspiracy?

Now, if I felt that the statements made by Mr. Schenck were attributable to Fox and I were to rule out those statements, then I would in effect be ruling there was no conspiracy. Or if I allowed them in I might be ruling that there was a conspiracy, but I am not going to base my ruling upon the question whether there was or was not a conspiracy because that is a question of fact for you to consider and to determine.

(Testimony of Alex Schreiber.)

Now, if you determine that there was a conspiracy and that the Fox West Coast or Fox was a part of that conspiracy, then the statements of Mr. Schenck can be applied to all the conspirators.

If you determine there is no conspiracy, then, of course, [1346] anything that Mr. Schenck said could not be applied to any of the other defendants.

This is a technical point of law but I think it is a question of fact for you to determine and not a question for the court. It is not a question of law. And whether or not Mr. Schenck represents in making these statements Fox, or was representing Fox or United Artists is something for you to determine. It is a question of fact, and you are to determine that from all the evidence that is introduced in this case.

So far we don't know. Depositions have been taken. Those depositions are not before you at this time. They haven't been read to you.

We have the statements of counsel that Mr. Schenck was only speaking for United Artists Theatres Circuit, but that is not evidence.

So, on the basis of the record at this time, I am going to overrule the objection.

Mr. Mitchell: Your Honor, would you be willing to state to the jury an undisputed fact with respect to the fact that United Artists is a distributor of motion pictures and United Artists Theatres Circuit is an exhibitor?

I think that is undisputed.

The Court: Yes, that is correct, and neither one

(Testimony of Alex Schreiber.)

of those parties are defendants in this particular case. But [1347] there may be parties who are not defendants who were also a part of the conspiracy.

Now, I don't know whether they were or not, but the fact that they are not a party defendant does not rule out that there was a conspiracy or if there was a conspiracy, that they were parties to it.

So, remember that the main issue in this case—and don't you take your eye off the ball, you must follow the main issue in this case and that is was there a conspiracy, and if you determine there is no conspiracy the case is over with. And you can't proceed with the case and determine any of the other issues until you determine that there was a conspiracy and you can't determine that until you hear all of the testimony.

Mr. Mitchell: I think it would also be agreed that there was no connection and there is no connection between United Artists and United Artists Theatres Circuit.

Mr. Corinblit: Yes, we will agree to that.

The Court: That is agreed to and that is understood.

Mr. Corinblit: All right.

Q. Mr. Schreiber, will you tell us what took place, what you said and what Mr. Schenck said and what the other parties said in this meeting with Mr. Schenck at the Twentieth Century-Fox Studios and in the offices of Mr. Schenck on [1348] March 15, 1949?

Mr. Mitchell: Now, your Honor, may our objec-

(Testimony of Alex Schreiber.)

tion be deemed to go to all of this line of testimony?

The Court: You may have a running objection. It is the same objection and the ruling is the same.

Mr. Mitchell: Thank you.

The Witness: This meeting was arranged by Irving Epstein. He called me at my home, I believe, and told me that he had this appointment with Mr. Joseph Schenck at the Twentieth Century-Fox Studio on Pico Boulevard at about 1:30 or 2:00 o'clock in the afternoon of March 15th.

Q. (By Mr. Corinblit): Mr. Schreiber, will you stop right there and identify again who Mr. Epstein is? Is he an employee of—who is he an employee of? A. Fox West Coast Theatres.

Q. Go ahead.

A. And Mr. Epstein asked me to come to that meeting to discuss the purchase of a half interest in our Paradise Theatre by Mr. Schenck.

Mr. Schenck wanted to purchase a half interest in our Paradise Theatre. Now, this was before we are built. This was March 15, 1949. We did not start construction of our theatre until October 7, 1949.

I went to Mr. Schenck's—I went to the Fox Studios on Pico Boulevard with my son and we met there Mr. Epstein [1349] from Fox West Coast Theatres, Mr. Pat Di Cicco, who was general manager, I understand, for the United Artists Theatres Circuit, and Mr. Joe Schenck, whom the entire industry knew was connected with Fox and United Artists Theatres Circuit. That was known all over the United States because Mr. Schenck, when I was

(Testimony of Alex Schreiber.)

told about him, was described to me as one of the ten biggest men in the motion picture industry and in my opinion he was maybe one of the top five.

The Court: We are not asking you for your opinion. We are not asking you what you were told. Just keep to the conversation now.

Q. (By Mr. Corinblit): Just state the conversation, Mr. Schreiber.

A. We met in Mr. Schenck's office and I had with me the photograph, one of the photographs of the front of the theatre building with the bowling alley that was combined. We never mentioned it here, but we had a bowling alley layout with the theatre in the building.

I laid the plans down after the proper introduction to Mr. Schenck by Irv Epstein of Fox West Coast Theatres, I laid the plans down on Mr. Schenck's desk and showed him a photograph of the theatre we planned to build.

I told him Irving Epstein from the Fox West Coast Theatres Circuit asked me to come, because he requested me to come there because they were interested in the theatre and wanted to buy a 50 per cent interest with-us.

Q. Mr. Epstein had told you Mr. Schenck wanted to discuss the matter with you?

A. Yes. They sent for me.

Q. All right.

A. Way before March 15th, Mr. Epstein had suggested a meeting.

Q. Just go on with the meeting of March 15th.

(Testimony of Alex Schreiber.)

A. So when we met in the office, he looked the plan over and he commented that it looked like it would be a beautiful theatre.

Q. Who was this that commented?

A. Mr. Schenck, and Mr. Irv Epstein and Mr. Pat Di Cicco both were pointing out all the fine features of the plan, which they had seen before this meeting, and they told Mr. Schenck what they thought of the neighborhood, and Mr. Schenck said he knew of the neighborhood, knew it very well, and it would make a good theatre operation.

Then we talked—I said to Mr. Schenck, “Well, I am told that we will have first run Metro pictures in that theatre, because the Loyola Theatre, the Fox Theatre, was running first run from all the distributors, they were running first run pictures, and on that basis the Fox theatre people have established Westchester as——”

The Court: Is that what you told Mr. Schenck or is that a conclusion?

The Witness: I told that to Mr. Schenck.

The Court: You tell us just what you told Mr. Schenck and don't tell us any conclusions.

The Witness: I told Mr. Schenck all the film companies were serving the Westchester area first run pictures, and I saw no reason why the Paradise shouldn't have first run Los Angeles pictures also.

And Mr. Schenck told me that he would put in Metro product first run in the Paradise Theatre and I should not worry about first run pictures, that would be his job and his organization would put

(Testimony of Alex Schreiber.)

first run pictures in that theatre, and for me not to worry about it and for me not worry about financing or equipment or anything, that that is what they would do.

During the conversation, he threw the switch up to his inner office communication and he called his secretary in and he asked her to bring in the Loyola Theatre receipts and his girl brought that in, and it was in a folder about the size of what is laying on the desk there. He opened it up and he read off eight or ten, maybe 12, maybe six pictures that were playing at the Loyola Theatre first run Los Angeles, with the Chinese Theatre and with the Los Angeles Downtown and with the Fox Wilshire and with the Uptown. He read off the receipts, and he said, "They do a very big business, very good business," or words to that effect, "in the Westchester area, and it is a good location and, boy, these are wonderful receipts."

He read off the first week, second week, and if they ran more than two weeks, he read off the three days or four days or five days of the third week, and then he put it down and said, "It's a very good area."

Then Mr. Epstein said to Mr. Schenck, "Mr. Schenck, [1353] I am telling Mr. Schreiber not to build the bowling alley, that we should not build the bowling alley." He used the word "we" many a time. "We should not build the bowling alley and we should use that lot for a second run theatre. Then we can run the pictures that play first run in

(Testimony of Alex Schreiber.)

the Loyola and first run in the Paradise, run the two of them together in the second run theatre at a smaller admission and furthermore," Mr. Epstein said, "If we do this, Mr. Schenck, I am sure Mr. Griffith will not build the Will Rogers Theatre," which was supposed to be built directly across the street from us at the corner of Will Rogers and Sepulveda. That was supposed to be an 1800 or 2,000 seat first run theatre.

Mr. Epstein said to Mr. Schenck, "We should not build the bowling alley. Let's build our second run theatre there and that will stop Mr. Griffith from building a theatre."

And Mr. Griffith did not build his theatre.

The Court: Now, that is not part of the conversation.

The Witness: I am sorry.

The Court: You are going outside the conversation.

The Witness: I'm sorry.

The Court: Keep right with the conversation.

The Witness: I will. Then we talked about——

Q. (By Mr. Corinblit): Just a minute, Mr. Schreiber. What did Mr. Schenck say to that statement by Mr. Epstein? [1354]

A. He told Mr. Epstein and me, "We will not worry about a second run theatre at this time. Let's build the Paradise and we will worry about the second run theatre later."

He said to me, "Young man, go on your trip and

(Testimony of Alex Schreiber.)

when you get back, Mr. Epstein or Mr. Di Cicco will meet with you and you will go to your attorney and you will draw papers and then we will proceed immediately with the building of the theatre."

Then I said to Mr. Schenck, "Mr. Schenck, before I leave, there is something that is bothering me."

He said, "What's that?"

I said, "Mr. Epstein told me before this meeting that you had several people with you that were going into this deal and because you had several people that you had to have a 60 per cent interest in the Paradise Theatre, rather than a 50 per cent interest. I am a little worried about being a minority stockholder."

He said, Mr. Schenck said to me, "Young man, don't worry about being a minority stockholder. There are laws in California that protect minority stockholders. You have nothing to worry about. If you are thinking about excessive salaries or excessive charges or anything, we will have the United Artists Theatre Circuit book and buy the pictures. They have a set scale or a set policy of," I believe he said "5 per cent or 5¼." He wasn't sure, "but there will be a [1355] set charge based on how much money the theatre takes in, based on the receipts, and that is what you will be charged for and no more."

I said I felt a little different about that, but that is something I assumed our attorneys would straighten out when we had our meeting.

He again said to me, "Young man, go on your va-

(Testimony of Alex Schreiber.)

cation and we will get together when you get back from your trip to Honolulu.”

Q. Mr. Schreiber, prior to that meeting of March 15, 1949, you had had some conversations with Mr. Irving Epstein, whom you described as an employee of Fox West Coast, is that right?

A. That is correct.

The Court: May I ask the witness a question?

Mr. Corinblit: Yes, sir.

The Court: You said something to Mr. Schenck about owning 60 per cent of the interest in the theatre. How did you get that information? From whom did you get that information?

The Witness: I got that information from Mr. Epstein.

The Court: What did Mr. Epstein tell you about the percentage that Mr. Schenck or his associates wanted?

The Witness: On about March 14th, the evening of [1356] March 14th or the afternoon of March 14th, Mr. Epstein, when we made the arrangements for the appointment on March 15th, said to me, “Alex, now we are going to meet Mr. Schenck at his office at the Twentieth Century-Fox Studios, and I want to tell you ahead of time, I don’t want you to be mad,” he said, “I don’t want you to be mad, but, you know, we talked about 50-50, but Mr. Schenck has several partners or several people that are going in on the deal with him and Mr. Schenck wants me to tell you that he wants, he needs or he wants 60 per cent of the deal.”

(Testimony of Alex Schreiber.)

I said, "Well, Irv, that isn't what you told me in the previous meeting. It was supposed to be a 50-50 deal."

Mr. Irving Epstein said to me, "Alex, what difference does it make whether it is 60-40 or 50-50? Your 40 per cent interest will earn you more money, being associated with Mr. Schenck, than if you had the place 100 per cent and, furthermore, with the tax bracket and the government taxes, how much of the extra 10 per cent will you be able to keep? Take my advice. Make a deal with Mr. Schenck and you will have nothing to worry about. You can continue or you can join a country club, you can take vacations, you can travel all over the world. You haven't got a thing to worry about. I am telling you to make this deal with Mr. Schenck."

I said, "All right."

The Court: When was the first meeting you had in [1357] which there was discussion that Mr. Schenck was going to take any part of the theatre?

The Witness: Oh, I would say several months prior to March 15th, right after the first of the year 1949.

The Court: Where did the conversation take place?

The Witness: The conversation took place with Mr. Epstein and myself in Mr. Epstein's office at the Fox Theatre offices on Vermont and Washington. They took place in my automobile, possibly in his automobile, at lunch, and several times we went to the restaurant on Western and Ninth, the Nika-

(Testimony of Alex Schreiber.)

bob. I never knew it, but Mr. Epstein took me there. I never knew about any Nikabob Restaurant. He took me there.

The Court: What was the first suggestion Mr. Epstein made to you relative to Mr. Schenck taking any percentage in the theatre? What did Mr. Epstein say?

The Witness: In the first conversation he had with me, he said, "Alex, our——"

No, the first conversation was Mr. Sam Decker told me that Irving Epstein wanted to talk to me, that he had one of the biggest men in the business that wanted to take a 50 per cent interest in the Paradise Theatre and build it with me 50 per cent.

Then I made the appointment. I told Decker, "All right, I will meet the man."

That was Irving Epstein, and Irving and I met in [1358] Mr. Decker's office several times in the back room, we met at lunch, we met in the office, we met in the automobile, we met in Mr. Epstein's office. I am not sure whether we met at my home or not, because in 1947 I didn't have a home here. I was living at the hotel.

The Court: What did Mr. Epstein say about Mr. Schenck wanting an interest in the theatre?

The Witness: He said he had one of the biggest men in the theatre industry that wanted a 50 per cent interest in the Paradise Theatre and would build it with me. At first he didn't tell me Mr. Schenck's name. He told me later, because I told him before I would commit myself to give up 50 per

(Testimony of Alex Schreiber.)

cent interest, I had to know who the man was, and when he told me Mr. Schenck, I just, literally speaking, fell over. [1359]

Q. (By Mr. Corinblit): Mr. Schreiber, I want to show you a telegram which has been marked Plaintiff's Exhibit 45-R-2 for identification, and ask you if you received this telegram.

(Handing document to the witness.)

A. That telegram I received from Irving Epstein regarding Joe Schenck——

The Court: The question is did you receive it. The answer is either yes or no.

The Witness: Yes, sir.

Q. (By Mr. Corinblit): And I will show you a telegram which has been marked Plaintiff's Exhibit 45-R-5, dated April 22, 1949, and ask you if you received this telegram.

(Handing document to the witness.)

The Court: Just answer the question yes or no.

The Witness: Yes, I did.

Q. (By Mr. Corinblit): I will show you a letter, a copy of a letter dated April 29, 1949, addressed to Mr. Irving Epstein. The address here is Twentieth Century-Fox Film Corporation, Insurance Department, South Vermont at Washington, Los Angeles, Cal.

I will ask you if you sent that letter to Mr. Irving Epstein. A. Yes.

Mr. Corinblit: Your Honor, we will offer [1360]

(Testimony of Alex Schreiber.)

in evidence Plaintiff's Exhibits 45-R-2 and 45-R-5 and 45-R-6.

Mr. Mitchell: Our objection goes to all of this, and Epstein included. We object to it not only because of the conversations with Mr. Schenck, but on the same basis the conversations or communications with Mr. Epstein.

The Court: Same ruling. The objection is overruled. They may be received in evidence.

(The documents referred to were received in evidence and marked as Plaintiff's Exhibits Nos. 45-R-2, 45-R-5, and 45-R-6.)

Mr. Johnston: May I add the objection that there has been no foundation laid with respect to the capacity in which Mr. Epstein was acting in this matter.

The Court: Is there any dispute that Mr. Epstein was an employee of Fox?

Mr. Johnston: None whatsoever, but he wasn't acting in that capacity. He was acting as a friend of this gentleman and an acquaintance of Mr. Schenck, but he wasn't acting as an employee of Fox.

The Court: Objection overruled. That is a question of fact for the jury.

Mr. Johnston: I simply want to make my objection for the record.

The Court: You may make your objection. I will certainly sustain you in your right to make an objection. [1361]

(Testimony of Alex Schreiber.)

Mr. Johnston: Thank you, sir.

The Court: Do you want to read those telegrams?

Mr. Corinblit: Yes. I want to read them. The first telegram has a stamp on it, a date stamp January 31, 1949. That was about six weeks prior to the meeting on March 15th with Mr. Schenck.

"The gentleman is highly interested and will work out matter with you upon your return. Regards. Irving Epstein."

Q. (By Mr. Corinblit): The gentleman referred to in that wire, Mr. Schreiber, was whom?

A. Joseph Schenck of Twentieth Century-Fox and United Artists Theatres.

Q. Now, Mr. Schreiber, in fact, in communications between you and Mr. Epstein had you been instructed by Mr. Epstein whether to use his name, whether to use Mr. Schenck's name or not?

Mr. Johnston: Just a moment, your Honor. I object to that as calling for a conclusion of the witness. No foundation has been laid.

The Court: Objection sustained.

Now, if you want to read the letters or the telegrams you may do so and then we will take a recess.

Mr. Corinblit: All right.

Q. (By Mr. Corinblit): Now, the following wire is a [1362] wire after the meeting of April 15th. It is dated April 22nd and is addressed to Alex Schreiber—withdraw that. It is addressed to A. Schreiber at 1323 Dime Building, Detroit.

(Testimony of Alex Schreiber.)

"Dear Alex. Have spoken to Joe. You will either hear from him by telephone or letter. Everything okay. Regards. Irving Epstein."

And "Joe" was whom?

A. Joe Schenck. [1363]

* * * * *

Q. (By Mr. Corinblit): Mr. Schreiber, yesterday at the conclusion of the [1370] session you had been relating the conversation that had taken place at the Twentieth Century-Fox Studios with Mr. Joseph Schenck.

There are one or two matters I wanted to ask you about that. With respect to pictures, that is the Loew's pictures that were mentioned there, was anything said by anyone there concerning the theatres in which the pictures were playing?

A. Yes. Mr. Schenck said to me when we had this meeting, that the Paradise would play first run Metro or Loew's pictures—I don't remember just how he described them, but it was Metro or Loew's pictures first run in the Paradise day and date with the Grauman's, Egyptian and with the Loew's State downtown and for me not to worry about first run product, that he would take care of that or anybody else's first run product; that that was the least I had to worry about and along those particular lines.

Q. All right. And then finally was anything said at that meeting with respect to the kind of theatre that the Loyola Theatre was?

(Testimony of Alex Schreiber.)

A. Yes. Mr. Schenck said he knew the Loyola Theatre. He knew the area. It was a good area, and that the Loyola was one of the top grossing theatres in the Fox first run chain. In fact, that is what he told me when he read off the list of those six to twelve pictures, when he read [1371] me the grosses and some of the grosses which I didn't remember yesterday. I remember those grosses distinctly. There was one or two of them that were over \$10,000 the first week that they had played the picture, and then he read me the receipts of the second week, and part of a third week, if the picture ran more than two weeks.

Q. Now, prior to that meeting with Mr. Schenck, had Mr. Epstein said anything to you concerning the theatres in which first run pictures were to be played?

A. Yes. Mr. Epstein, the first time when he told me he had one of the biggest men in the industry that wanted to buy the 50 per cent interest, he told me that this party would get us first run pictures day and date with Hollywood and downtown. And later when he told me it was Joe Schenck, he suggested or recommended very highly that I make this deal because he said: "You would have first run Metro pictures day and date with the Grauman's, Egyptian and Loew's State downtown," and that I would have nothing to worry about and that my 50 per cent interest—I could go traveling all over and take it easy and join a country club and enjoy Cali-

(Testimony of Alex Schreiber.)

fornia, or words to that effect, but I would have nothing to worry about if I made that tie-up. [1372]

Q. Now, after the meeting on March 15, did you have a conversation with Mr. Epstein?

A. Yes. Well, I recited yesterday the one I had just prior to the meeting about where Mr. Schenck, he said, needed, instead of 50 per cent, 60 per cent.

Q. Yes.

A. Then the evening of March 15, after the meeting, that was the night before or late in the afternoon of the day before I went on my vacation, Irving called me at the house, and he told me that he was well pleased with the meeting, Mr. Schenck was well pleased with the meeting, everything is fine, and Mr. Schenck told him that when I got back from my vacation that we should go to their attorneys and draw up the papers, but, "Alex, I don't want you to get mad, everything is all right, but, Mr. Schenck, because of the people that are going to go in the deal with him," or words to that effect, either the people going in with him or—60 per cent was not enough—I am trying to get the words out, trying to remember the exact words he said, but the substance was now 60 per cent was not enough for Mr. Schenck, Mr. Schenck wanted 70 per cent of the theatre, and for me not to worry, and the same story again about they will get the first run pictures and they will finance the place, because at that time we didn't have the mortgage, I didn't accept the mortgage yet, we hadn't started building yet, hadn't

(Testimony of Alex Schreiber.)

bought the equipment yet, but we [1373] had the land bought, we had the plans all ready to go, had the application in for the mortgage.

“You don’t have anything to worry about, Alex, take my advice, make the deal, even though it is 70 per cent for Mr. Schenck and his crowd. You will have enough left out of the 30 per cent, it will be more than if you had the place all by yourself and you would have to bother about buying pictures, running it, financing it, buying equipment, you won’t have any of that, and the amount of money you have paid in on the land, the amount of money you have already paid the architect, will be more than sufficient to be your 30 per cent of the deal. Take my advice. Make the deal.”

Well, it was just a matter of less than 18 or 20 hours that I was leaving town, and I was quite elated over the fact that I was going to make this deal and I wouldn’t have the bother of buying pictures or equipment or anything like that, and I said, “Well, okay. When I get back from my vacation, we will go to the attorney and draw up the papers.”

Q. Approximately when did you return from your vacation?

A. I think it was around the 5th to the 7th or 8th of April. I was gone about 23 or 24 days.

Q. When you returned, did you have a conversation with Mr. Epstein? A. I did. [1374]

(Testimony of Alex Schreiber.)

Q. What was said between you? What did you say and what did he say?

A. Well, I would imagine it was in the first two days that I got back, I called Irv Epstein, and I asked him——

Q. Just a minute, Mr. Schreiber. You are not giving us a conversation that you imagine. I want the conversation that happened. When you state you imagine, you are talking about the time?

A. Yes, in that 48 hours.

Q. It took place within 48 hours?

A. Yes, I am almost positive of that.

Q. All right.

A. It may have taken place the first day I got back.

Q. Tell me what you said and what Mr. Epstein said to you.

A. I called Mr. Epstein to tell him I was back and wanted to know if he would contact Mr. Schenck or if he contacted Mr. Schenck, because I think I wrote him a card about when I was coming back. I wanted to know if he made arrangements to meet at the attorney's office to draw up the preliminary papers, so, naturally, I could show it to my attorney to see if it was all right, or make an appointment with the attorney to check it.

Irving Epstein told me he hadn't heard from Mr. Schenck, Mr. Schenck was out of town, that [1375] he thought he went up to San Francisco on the Golden State Theatre group, or the Nafie group,

(Testimony of Alex Schreiber.)

there was some group of theatres up there that he had—if I am not mistaken, at that time there was something in the papers that the——

Mr. Mitchell: Well, we don't need what is in the papers, your Honor. That wasn't part of the conversation.

The Court: Yes. Restrain yourself to giving the conversation.

Q. (By Mr. Corinblit): Just state what was said, Mr. Schreiber.

A. I believe Epstein told me he went up—that Mr. Schenck went to San Francisco to straighten out a matter that the government was investigating, whether the money that Mr. Schenck had in his chain around San Francisco was a loan or he had bought into these theatres, because there was some question there about——

Mr. Mitchell: Just a minute.

Mr. Corinblit: Just a minute, Mr. Schreiber.

The Court: Now, just restrain yourself to giving us just the conversation, not your conclusions that you drew.

The Witness: I just forget. I am sorry.

Q. (By Mr. Corinblit): Have you concluded, Mr. Schreiber, with what Mr. Epstein told you and what you told him?

A. No. He said we would have to wait [1376] until Mr. Schenck got back. I waited maybe 10 days, might have been a little longer, and I—Mr. Epstein called me and I called him all during this 10 or 12

(Testimony of Alex Schreiber.)

days that I still remained in Los Angeles, and Mr. Epstein told me he had not heard from Mr. Schenck or what attorney that we were to go to, so I went back to Detroit.

Q. Let's stop there. You then left Los Angeles and returned to Detroit, is that right?

A. That's right.

Q. All right. Now, we had introduced into evidence yesterday the wire dated April 22, which is Plaintiff's Exhibit 45-R-5 in evidence, which I think you testified you received in Detroit after you returned from Los Angeles, is that right?

A. Yes. That is my office in Detroit. [1377]

Q. All right. Now, we also had admitted into evidence Plaintiff's Exhibit 45-R-6, which was read to the jury, and as you recall it was your letter to Mr. Irving Epstein.

Now, in that letter, Mr. Schreiber, there is a statement that I want to ask you about. You say in this letter that:

"Sam Decker sent me a copy of one of the trade papers with news of the activity of our mutual friend who we are trying to make an appointment with."

Now, what was the information that you obtained about the activities of Mr. Schenck?

Mr. Mitchell: Now, wait a minute, your Honor. I object to that on the ground it is hearsay.

The Court: It is purely hearsay, what he read

(Testimony of Alex Schreiber.)

in the newspaper. That is hearsay whether it comes from a newspaper or a magazine.

Mr. Corinblit: There will be independent evidence offered as to what was going on and there is a reference here in a letter to an employee of Fox as to what activities were going on.

He transmitted this information to a representative of Fox. In other words, one witness says to another person A or B. Now, it is not offered for the purpose of showing that these things in fact took place, but there will be independent evidence to that—but it is simply to demonstrate [1378] that this witness said these things to the employee of Fox.

The Court: Objection sustained.

Q. (By Mr. Corinblit): Now, Mr. Schreiber, I think you testified that Mr. Schenck stated to you that he wanted 60 per cent interest in the Paradise Theatre to put the Metro product in there first run. After this date did Mr. Schenck—was an interest obtained by Mr. Schenck in the theatre?

A. No.

Q. Did you ever receive any Metro product on first run? A. No.

Q. Did you ever receive any other product during the period from August 1950 to September 1951 on first run? A. No.

Q. Mr. Schreiber, did you at some subsequent date to this conversation have a conversation with Mr. Charles Skouras? A. Yes.

(Testimony of Alex Schreiber.)

Mr. Mitchell: Now that we have left that subject, your Honor, I would like to move to strike all the evidence about Mr. Schenck and Mr. Epstein on the ground it is immaterial and has nothing to do with this lawsuit.

The Court: Motion denied.

Q. (By Mr. Corinblit): Did you have more than one [1379] conversation with Mr. Schenck?

A. I did.

The Court: Mr. Schenck?

Mr. Corinblit: I am sorry.

Q. Did you have more than one conversation with Mr. Skouras? I am talking now about Mr. Charles P. Skouras. A. I did.

Q. Did you have a conversation with Mr. Skouras at the Hillcrest Country Club? A. I did.

Q. Will you tell us approximately when that conversation took place?

A. I think it was while the theatre was under construction. I went to the Hillcrest Country Club for lunch.

Q. Just a minute, Mr. Schreiber. You told us when. Now, I want you to tell us who was present at the conversation—what persons.

A. There was Ted Gamble, Mr. Cy Fabian and Mr. Charles Skouras.

Q. At that time——

Mr. Mitchell: May we have the time fixed when the theatre was under construction because that doesn't mean anything.

(Testimony of Alex Schreiber.)

The Witness: The theatre started construction on October 7, 1949. [1380]

Q. (By Mr. Corinblit): And you opened the theatre on—— A. August 23, 1950.

Q. Now, who was Mr. Charles Skouras at that time?

A. Mr. Charles Skouras was the head man of Fox West Coast Theatres, and I understand everything that Fox was connected with.

Q. Now, will you tell me what you said and what Mr. Skouras said and what anyone else present at that meeting said at the time?

A. If I remember correctly I recognized the three men sitting at the table. I hadn't seen Cy Fabian or Ted Gamble for quite a while, and I naturally walked up to the table and said, "Hello" to both Cy Fabian and Ted Gamble.

The asked me if I knew Mr. Skouras. They wanted to make the introduction and I said, "I know Mr. Skouras." Mr. Skouras wasn't too pleased to meet me and appeared to be mad.

The Court: Now, now——

Mr. Mitchell: I move that be stricken and the witness instructed as to how to testify.

The Court: You can't testify as to your impressions or what you think. All you can testify is to what you said and what they said and what actually happened. You can't testify as what he seemed to be.

The Witness: I am sorry, I lose myself. [1381]

(Testimony of Alex Schreiber.)

The Court: All right.

The Witness: Mr. Skouras said: "Yes, I know Mr. Schreiber," and after a few minutes Mr. Skouras said to me, "Why you build the theatre in my neighborhood," or "territory." He used one of those words.

"I don't come to Detroit and build theatre in your territory," or "neighborhood."

"You want a theatre in Detroit. I sell you Fox Theatre in Detroit." I said, "Well, I am not interested in the Fox Theatre in Detroit. I don't want to buy the Fox Theatre in Detroit, but maybe my associates will. When I go back to Detroit, if you are serious, I will be glad to talk to my associates about it."

So he says, "Okay, you come in my neighborhood. You shouldn't come in my neighborhood," or "territory." I have forgotten the exact word that he used.

So I said to Mr. Skouras, "Well, the neighborhood can stand two theatres. It is a big neighborhood. It is a growing neighborhood. I am going to build a beautiful theatre. It will be a credit to the motion picture industry. You have nothing to worry about, Mr. Skouras. You are doing a good business." or words to that effect, "at the Loyola Theatre and there is a lot of people there. And furthermore," I said, "Mr. Skouras, Mr. Griffith is announcing he is going to build a big 1800 or 2000-seat [1382] theatre," and I said, "So if Mr. Griffith is going to come

(Testimony of Alex Schreiber.)

in there or indicated it, because there was an announcement in the Westchester paper and showed a picture of the Will Rogers Theatre which was supposed to be diagonally across from the Paradise, I don't know why we can't build a theatre."

"Well, I didn't come in your neighborhood in Detroit and you shouldn't come in my neighborhood," or "my territory. You shouldn't do that."

Well, he was mad so I left.

Q. (By Mr. Corinblit): Is that all that took place so far as that conversation was concerned?

A. No, I left and went to my locker where I had placed my briefcase and I came out with the briefcase and some photographs, and I went over to Ted Gamble—I think they were through with the lunch or I saw Ted and Cy sitting together and Mr. Skouras had walked away from the table. I don't remember, but I do remember distinctly of showing the pictures of the front of the building, the architect's drawing of the front of the building and I had two other pictures—air view pictures of the Westchester area and I showed it to Ted Gamble and said—

Q. Just a minute.

Mr. Johnston: Just a minute. I think this may be hearsay so far as Ted Gamble is concerned. [1383]

The Court: All he has testified so far is that he showed some pictures.

Mr. Johnston: I am perhaps anticipating something. [1384]

Q. Now, Mr. Schreiber, was Mr. Skouras pres-

(Testimony of Alex Schreiber.)

ent at the time you showed the pictures to Mr. Gamble, do you remember?

A. I would only guess and say he was not at the table.

Q. All right.

A. So I showed the pictures——

The Court: No. You showed the pictures and that's all.

Q. (By Mr. Corinblit): Now, after that conversation, Mr. Schreiber, was there a subsequent time when you had another conversation with Mr. Skouras? A. Yes. I had a dinner——

Q. Now, where did the conversation take place?

A. In the gymnasium room of Mr. Skouras in the Twentieth Century-Fox office building, or the Fox Theatres, National Theatres, the big building that they have on Vermont and Washington, in the gymnasium. That is the private gymnasium of the Fox officials, I understand.

Q. All right.

A. I went in the gym with George Bowser, whom I had a dinner date with, and from the dinner we were supposed to go to the Variety Club. Before we went into the gym, George Bowser—I met him in his office.

Q. Who was Mr. George Bowser at that time?

A. Mr. George Bowser was the general manager, the head man—I think the No. 1 man under Charlie Skouras of the Fox [1385] Theatres.

Q. All right.

(Testimony of Alex Schreiber.)

A. So Mr. Bowser said, "I want to go—come with me. I want to go in and see Mr. Skouras before we leave."

We got into this——

Mr. Mitchell: May we have a date for this?

Mr. Corinblit: Yes.

Q. Will you give the approximate time of this, as best you can remember, of this conversation with Mr. Skouras and Mr. Bowser?

A. This would be between August 1950 and January 1, 1951.

Q. All right. Now, will you tell us first what was said between you and Mr. Bowser just prior to your going in to see Mr. Skouras, and then what was said in the presence of Mr. Skouras.

A. We got in this gymnasium and Mr. Bowser also said he wanted to clean up at the same time before we went to dinner.

Mr. Ted Gamble was in the gym talking to Mr. Skouras when the two of us got in the room.

Mr. Bowser said to Mr. Skouras, "You know Mr. Schreiber, don't you, Mr. Skouras?"

He said, "Yes, I know him, I know him."

I listened for a few minutes while Mr. Bowser was [1386] talking to Mr. Skouras.

Then Mr. Skouras, after Mr. Bowser got through with him, says to me, "Say, kid, that Marco Wolff, he still book your theatre?"

I said, "yes, he still is booking our theatre."

He said, "You no go get pictures. He no good,

(Testimony of Alex Schreiber.)

and, you see, you going to have lots of trouble with him. He no good, no good. You want to sell your theatre? You want to lease your theatre? I lease it. I buy it. Price must be cheap."

So I said to Mr. Skouras, "I don't know how cheap." or words to that effect, but I would be glad to get my money out of it, this buying pictures and the trouble we are having is too much for me, or I will lease it, and I will take"—I think the figure I used was 4 per cent, I am not sure, on our investment, either 2½ or 4 per cent on our investment, or I would be glad to get our money out of it, because it is too much trouble there with the film companies and with Fox Theatres and trying to bid for pictures or forcing us to bid or insisting on bidding.

I said I would be glad to lease it or sell it, but whether it would be cheap or not, I don't know.

And he said, "You give the figures, you talk to Bowser and you give Bowser figures," or "You see Bowser, and I lease, or I buy theatre, but must be cheap." [1387]

Q. Now, did you thereafter leave the presence of Mr. Skouras with Mr. Bowser?

A. Yes, and Mr. Ted Gamble was standing there at the time.

We went to dinner, and on the way out, or at the the dinner table, George Bowser said to me, "Alex, I don't know what the boss means. He can't buy the theatre or lease it. The government won't let us buy or lease theatres. In fact, we have to get rid of

(Testimony of Alex Schreiber.)

theatres. I don't know what he has in mind or why why he said that to you."

I said, "George, you heard him," or words to that effect. "I will bring in the figures in a day or two. I will see my accountant and I will draw up some figures, and if I can make a deal, I would like to make a deal, because this Los Angeles territory is just terrible," or words to that effect, "in buying pictures."

He said, "Well, I don't know what the boss, I am still puzzled, I don't know why the boss told you that."

I said, "Maybe he has in mind somebody like Ted Gamble, who was standing there in the room, or some other friend of his to make a deal with me and be like a blind or a shield for Fox Theatres."

That was the discussion I had, or words to that effect. It may not be the exact words, but that was the substance of our conversation. [1388]

Q. Did you subsequently deliver figures to Mr. Bowser? A. I did.

Q. About how long after this meeting did that take place?

A. Oh, I would say within four or five days, maybe two days.

Q. Where did it take place?

A. In Mr. Bowser's office, in Fox Theatres' office, on Vermont and Washington.

Q. At the time you delivered those figures, what did Mr. Bowser say?

(Testimony of Alex Schreiber.)

A. He again repeated that he don't know why the big boss, or Mr. Skouras asked for the figures or why he was interested, but he would take the figures and he would discuss it with him, and if anything comes up, he would let me know, and he took the figures and he put them in the center drawer of his desk, pulled out the long wide drawer and he put the papers in there.

Q. Did Fox West Coast ultimately acquire any interest in the Paradise Theatre?

A. No, they did not.

Q. Did the Paradise Theatre ever get first run pictures? A. No, they did not.

Q. Mr. Schreiber, did you have at any [1389] time a conversation with Mr. Edward Zabel?

A. I did.

Q. Will you give us the approximate time of that conversation?

A. I met Mr. Zabel for, I believe, the first time when he came to my home either the end of July, the last week, about the last week of July, or about the first week in August, the first or second week in August.

Q. What year?

A. 1950, before we opened the theatre.

Q. Who was present at your home when that meeting took place?

A. There was Eddie Zabel, who was supposed to be the No. 2 man of the Fox organization, he and Bowser. Bowser was No. 1 in the trade, or what I

(Testimony of Alex Schreiber.)

had learned, Mr. George Bowser was No. 1 man under Skouras, and Mr. Eddie Zabel was the No. 2 man, and Eddie Zabel at that time was the head buyer and booker of all the theatres, for Fox theatres.

There was Earl Collins, the division man or the district manager for Republic pictures. There was Edmund Granger, the producer, from RKO Pictures, who has produced a lot of John Wayne pictures.

There was William Topliker. He was the broker. And there was an attorney that came with them.

There was Mr. Arnold Kreiger, my attorney, and [1390] myself.

Q. Will you tell me what was said at that meeting by Mr. Zabel or by any of the other parties in his presence, and what you said?

A. When we were all together, Mr. Topliker, the broker, says, "Alex, these are the people that I told you about that want to buy the Paradise Theatre. You asked to see the principals. Here they are." Or words to that effect.

He says, "They are ready and they have a check to give you"—I don't remember whether he says \$25,000 or \$50,000—"as a deposit to buy the Paradise Theatre only, nothing to do with the bowling alley, just the theatre, for \$550,000.

"You said you wanted to see the principals. Here they are. You know Mr. Eddie Zabel."

(Testimony of Alex Schreiber.)

I believe I said, "I heard of him or I have seen him around some exhibitor affairs or meetings."

And he said, "You know Earl Collins."

I said, "Yes, I know Earl Collins, because I spoke to Earl Collins myself about pictures for the Paradise Theatre."

He said, "You know Eddie Granger."

I said, "I know him by being the producer of the John Wayne pictures for RKO." [1391]

He says, "This is their attorney." He told me the name but I completely forgot the name and to this day I don't know the man's name.

Then, of course, I introduced Mr. Krieger as my attorney.

He said, "The offer still stands and we are here to make an offer and we brought an attorney and are ready to make the deal."

We went over the figure of \$550,000. They wanted to give me \$125,000 cash. They were to assume the mortgage of \$175,000. They were going to assume the equipment contracts, around 75,000 and rebate me the money, because I made a deposit down. There was a balance, I believe, \$175,000. There was 125 and 175 and 175—they were going to pay me at the rate of \$1,000 a month.

They said they would pay me 2 per cent or 3 per cent on that balance of \$175,000, payable \$1,000 a month.

And I told them that the interest rate was too low. It should be 5 per cent or 6 per cent.

(Testimony of Alex Schreiber.)

They said, "Well, we will straighten out the interest rate later on."

I said, "Well, wait a minute. You are going to owe me about \$175,000 at \$1,000 a month. That's a long time. How do I know I am going to get my money? How do I know that you people are going to be able to get pictures for the theatre [1392] so that I will know I will get my money?"

So Mr. Zabel said, "You leave that to me. There will be no trouble getting pictures."

And Earl Collins said, "Alex, you are not worried about getting pictures," or words to that effect. He said, "We will take care of the picture end of it. You haven't got a thing to worry about. As far as prevues are concerned, Eddie Granger will give you all his pictures prevue at the theatre. Eddie Granger will make arrangements and we will get prevues from everybody."

So I says, "I don't know. I can't make up my mind, because I like to talk to Marco Wolff," because I had a previous 30 day agreement wth Marco Wolff—— [1393]

Mr. Mitchell: Now, wait a minute. We are going into——

The Court: You said you wanted to talk to Marco Wolff.

The Witness: I wanted to talk to Marco Wolff before I made up my mind, because with the Marco Wolff setup I was to get—Marco Wolff was going to get me first run Paramount pictures in the Para-

(Testimony of Alex Schreiber.)

dise when he got through with his lawsuit. He figured he was going to win his lawsuit and if he won his lawsuit then he was going to put Paramount pictures in the Hollywood, where he had them, Hollywood Paramount, downtown Paramount. He was going to put them in the Paradise. He was going to put it in the Manchester and he hoped to put them in the Baldwin Theatre.

He said that the lawsuits were pending on the Baldwin and a lawsuit pending on the Manchester, and pending on the two downtown Paramount houses and when that was set and he was sure he would get it, we would have a five-unit Paramount first run theatres that would be equivalent to the Fox Loyola and Fox Uptown and the Fox Wilshire, the Los Angeles Fox and the fifth one was the Fox Uptown.

So, our five theatres would be equally as good and could pay the distributor as much money as Fox could. I told that to Mr. Zabel and Mr. Granger and Mr. Earl Collins and they laughed and they said, "Marco Wolff will never get you first run pictures. He has a lawsuit and nobody knows whether he is going to win it or not." So I says, "Well, if [1394] he doesn't get any first run pictures,"—and he had promised it to me by opening time because we hadn't been opened yet, he said that he would get us mostly likely the 7-day pictures because he had trouble when he opened his Southside Theatre. He couldn't get 7-day pictures but

(Testimony of Alex Schreiber.)

eventually he got 7-day pictures, and he may not be able to get me pictures immediately on 7-day run. It may take a little time—it may take three months or two months or six months, but eventually he is sure we will have 7-day pictures at the Paradise and then we will get first run pictures if he wins his lawsuit. He was sure of that, and when I told that to Mr. Zabel and Mr. Granger and Mr. Collins and the attorney was there, my attorney, they practically laughed. They said, “Marco Wolff will never get you first run, and Marco Wolff will never get you seven days. Marco Wolff isn’t liked. Nobody likes him and you are going to have plenty of trouble with Marco Wolff if he buys and books your theatre.”

I said, “Well, with all that that you say,” and I figured out that they were just saying that——

Mr. Mitchell: What he figured out is unimportant.

The Court: Don’t tell us what you figured out.

The Witness: So, I said I would have to talk to Marco Wolff and I would talk to him the next morning or that night. [1395]

I tried to get a hold of him that night. I told them I would let them know in a couple of days. And I remember distinctly calling Marco Wolff and I told him——

Mr. Corinblit: Just a minute, Mr. Schreiber. You may testify as to what conversation you had with Mr. Marco Wolff if it was in the presence of the defendant, but you cannot testify to a conversa-

(Testimony of Alex Schreiber.)

tion you had with Marco Wolff outside of the presence of the representatives of the defendants.

Q. Have you concluded the conversation that you had at that time with Mr. Zabel and the other associates in the room?

A. Well, there may have been some discussion about pictures and the general theatre business and they left, and I told them I would let them know in a few days.

Q. All right. Now, did Mr. Zabel or his associates ever acquire an interest in the Paradise Theatre? A. No.

Mr. Corinblit: May I have Exhibits 33-A, 33-B and 33-C.

I offer in evidence at this time Exhibit 33-B which is the agreement between the Los Angeles Extension Company and Venice Investment Company dated January 10, 1945.

And I also offer in evidence the deed of the Los Angeles Extension Company to Mr. Alex Schreiber, which is Exhibit 45-A. [1396]

The Court: What is the necessity of the agreement and deed in the record? There is no necessity for it, is there? There is no question but what the property was bought by Mr. Schreiber.

Mr. Corinblit: The agreement, your Honor, is the agreement pertaining to the restrictions.

The Court: Yes, I know what the agreement is.

Mr. Corinblit: Let me say this. I don't want to argue at length on this point, but we have submitted a memorandum on this matter.

(Testimony of Alex Schreiber.)

The Court: I have read your memorandum and I am still of the same opinion I was before I read it.

Mr. Corinblit: Then I don't want to trouble you with an extended argument.

Mr. Johnston: I will make an objection on the ground it is incompetent, irrelevant and immaterial.

The Court: Objection sustained.

Mr. Corinblit: Does the objection go to the deed as well?

The Court: To the deed and the agreement.

Mr. Corinblit: All right, your Honor. I would like to complete the offer.

We will offer 33-A, which is the deed to the Loyola property as well as 33-C, which is the subsequent agreement between the Venice Investment Company and the Extension [1397] Company dated July 21, 1948.

The Court: Same objection and same ruling.

Q. (By Mr. Corinblit): Mr. Schreiber, in about February 1950, you made written contact with the film companies for pictures for the Paradise Theatre, did you not? A. I did.

Mr. Corinblit: May I have Exhibit 1-A, please. I should like to have the entire group and then I can pick them out as we go along.

Q. I will show you Plaintiff's Exhibit 1-A for identification, Mr. Schreiber, a letter from the Paradise Theatre Building Corporation to Paramount Pictures Corporation dated February 6, 1950, and ask you whether or not you sent the original thereof to Paramount? A. I did.

Q. Do you recall, Mr. Schreiber, that a dupli-

(Testimony of Alex Schreiber.)

cate copy or, rather, a separate letter but having the same contents was sent to Loew's, and that is an exhibit in evidence, Exhibit 6-A; was sent to Warners, which is Exhibit 10-A; was sent to Universal, which exhibit is already in evidence as Exhibit 14-A; was sent to RKO, Exhibit 21-A; was sent to Columbia; was sent to United Artists. Do you recall that that was done? A. I did.

Mr. Corinblit: I will offer in evidence at this time [1398] Plaintiff's Exhibit 1-A, which is the letter addressed to Paramount Pictures.

The Court: It may be received in evidence.

(The exhibit heretofore marked Plaintiff's Exhibit 1-A, was received in evidence.) [1399]

* * * * *

Mr. Corinblit: I would like to offer in evidence the similar letters that were sent to the other companies named. Exhibit 6-A.

The Clerk: Already in evidence, Mr. Corinblit.

Mr. Corinblit: 6-A is in evidence.

Exhibit 10-A, Exhibit 14-A. 14-A is in evidence.

Exhibit 21-A. That should be 21-B and Exhibit 26-A and Exhibit 30-A.

The Court: They will be received in evidence.

The Clerk: You have Exhibit 10-B here.

The Court: Yes.

The Clerk: Do you want that in evidence? You haven't said anything about that.

Mr. Corinblit: 10-B in evidence? Yes.

The Clerk: 10-A, 10-B, 21-B, 26-A and 30-A are in evidence.

(The exhibits heretofore marked Plaintiffs'

(Testimony of Alex Schreiber.)

Exhibits 10-A, 10-B, 21-B, 26-A and 30-A, were received in evidence.)

Q. (By Mr. Corinblit): Turning first to Warners, Mr. [1400] Schreiber, I show you Plaintiff's Exhibit 10-C and ask you whether or not you received this letter from the defendant Warners; 10-D and ask you whether or not you sent this letter to Warner's dated March 6, 1950, and 10-E, I will ask you whether you received this letter from Mr. Fred Greenberg of Warner's dated March 8, 1950?

A. Yes, I received this letter of February 9 from Mr. Roy Haynes.

Q. That is 10-C?

A. Yes. I sent this March 6th letter to Mr. Greenberg or Mr. Herbel on March 6th, 1950. [1401]

Q. That is 10-D.

A. And I received this letter on March 8, 1950.

Mr. Corinblit: We will offer in evidence as Plaintiff's exhibits 10-C, 10-D and 10-E.

The Court: In evidence.

The Clerk: Exhibits 10-C, 10-D and 10-E.

(The exhibits referred to were received in evidence and marked Plaintiff's Exhibits 10-C, 10-D and 10-E.)

Mr. Corinblit: We have already introduced in evidence the Metro letters. We have one more, Plaintiff's 6-F.

Q. Mr. Schreiber, I will ask you whether or not you received this letter from Mr. Hickey.

A. I did receive this letter.

Mr. Corinblit: We will offer in evidence Plaintiff's Exhibit 6-F.

(Testimony of Alex Schreiber.)

The Court: In evidence.

The Clerk: Exhibit 6-F.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit 6-F.)

Q. (By Mr. Corinblit): I will show you Plaintiff's Exhibit 1-B, which is a letter, Schreiber to Paramount Pictures in New York, dated February 6, 1950, and ask you whether you sent the original of this letter to Paramount in New York. Just whether you sent it.

A. Yes, I did. [1402]

Q. And Plaintiff's Exhibit 1-C, which is a letter from Taylor to Schreiber, dated February 9, 1950, and ask you whether you received that from Mr. Taylor of Paramount.

A. Yes, I received this letter.

Q. I show you Plaintiff's Exhibit 1-D, which is a letter from Mr. Schwallberg, New York, Paramount Film Distributing Corporation, to Alex Schreiber, dated February 10, 1950, and ask you if you received that from Mr. Schwallberg.

A. Yes, I did.

Mr. Corinblit: We will offer Plaintiff's Exhibit 1-B, 1-C and 1-D in evidence, your Honor.

The Court: In evidence.

The Clerk: Plaintiff's Exhibits 1-B, 1-C and 1-D.

(The exhibits referred to were received in evidence and marked Plaintiff's Exhibits 1-B, 1-C and 1-D.)

Q. (By Mr. Corinblit): I will show you Plaintiff's Exhibit 14-B and 14-C, Mr. Schreiber. 14-B is a letter, Schreiber to Universal, dated February 6,

(Testimony of Alex Schreiber.)

1950, which is in evidence. I am sorry. I see that 14-C is already in evidence as well.

I will show you, Mr. Schreiber, a group of exhibits, the first of which is identified as 21-A, a letter Schreiber to RKO, dated February 6, 1950, and ask you whether you sent that letter to RKO.

A. This letter I sent to RKO in New York.

Q. In New York? A. To Mr. Mochrie.

Q. I will show you Plaintiff's Exhibit 21-C, which is a letter, Cohen to Schreiber, dated February 8, 1950, and ask you whether you received that letter from RKO through Mr. Cohen.

A. Yes. Mr. Cohen was the local branch manager.

Q. I will show you Plaintiff's Exhibit 21-D, which is a letter, Zimmerman of RKO to Paradise Theatre Building Corporation, dated February 23, 1950, and ask you whether you received that from Mr. Zimmerman.

A. Yes. Mr. Zimmerman was the attorney for RKO.

Mr. Corinblit: We will offer Plaintiff's Exhibits 21-A, 21-C and 21-D in evidence.

Mr. Mitchell: Your Honor, in view of your previous rulings with respect to RKO, Columbia and United Artists, which are not defendants in this action, but as to which you have permitted evidence of oral matters, may we have our objection on the ground that those matters concerning RKO, Columbia and United Artists, are incompetent, irrelevant and immaterial, go to all testimony with respect to

(Testimony of Alex Schreiber.)

those three companies, so we don't keep interrupting for that purpose?

The Court: Yes. You may have the same objection. Same ruling. Objection overruled. The exhibits may be admitted in evidence. [1404]

The Clerk: 21-A, 21-C and 21-D.

(The exhibits referred to were received in evidence and marked Plaintiff's Exhibits 21-A, 21-C and 21-D.)

Q. (By Mr. Corinblit): Mr. Schreiber, I show you Plaintiff's Exhibits 26-B, 26-C and 26-D. 26-B is a letter, Schreiber to Columbia, dated February 6, 1950. I ask you whether you sent the original of that letter to Columbia.

A. Yes. This is a letter to Columbia in New York, attention Abe Montague. He was the general sales manager.

Q. And a letter, March 6, 1950, Schreiber to Columbia, attention branch manager. That is in Los Angeles. Did you send that letter?

A. Yes. I sent it to the branch manager here in Los Angeles.

Q. 26-D, letter from Schreiber to Montague, dated March 6, 1950. Did you send that letter to Mr. Montague of Columbia Pictures Corporation in New York?

A. Yes, I did.

Mr. Corinblit: We will offer Plaintiff's Exhibits 26-B, 26-C and 26-D in evidence, your Honor.

The Court: In evidence.

The Clerk: 26-B, -C and -D.

(The exhibits referred to were received in

(Testimony of Alex Schreiber.)

evidence and marked as Plaintiff's Exhibits 26-B, 26-C and 26-D.) [1405]

Q. (By Mr. Corinblit): I will show you Plaintiff's Exhibit 30-B, a letter Schreiber to United Artists Corporation, dated February 6, 1950, and ask you if you sent the original of that letter to United Artists in Los Angeles. A. I did.

Q. I will show you Plaintiff's Exhibit 30-C, which is a letter, Schreiber to United Artists in Los Angeles, and ask you whether you sent the original of that letter to Los Angeles. A. I did.

Q. To United Artists Corporation?

A. I did.

Q. I show you a letter, Exhibit 30-D, which is a letter, Schreiber to Mr. Grad Sears, United Artists Corporation in New York, dated March 6, 1950, and ask you whether you sent that letter to Mr. Sears in New York, United Artists Corporation.

A. Yes, I did.

Q. I will show you Plaintiff's Exhibit 30-E, which is a letter, United Artists Corporation, by J. J. O'Laughlin, branch manager, to Alex Schreiber, March 9, 1950, and ask you if United Artists through Mr. O'Laughlin sent that to you.

A. Yes. I remember that one distinctly.

Q. I will show you Plaintiff's Exhibit 30-F, which is a letter, Schreiber to United Artists Corporation in Los Angeles, dated March 22, 1950, and ask you—I notice there is a date [1406] written on here of 1959. That is intended as 1950, is that right?

A. That's right.

(Testimony of Alex Schreiber.)

Q. I will ask you if you sent that letter to United Artists Corporation.

Mr. Johnston: You are speaking of the distributing company, are you not, Mr. Corinblit?

Mr. Corinblit: Yes, that's right.

The Witness: Yes.

Mr. Corinblit: We will offer in evidence Plaintiff's Exhibits 30-B, 30-C, 30-D, 30-E and 30-F.

The Court: In evidence.

The Clerk: Exhibits 30-B, 30-C, 30-D, 30-E and 30-F.

(The exhibits referred to were received in evidence and marked as Plaintiff's Exhibits 30-B, 30-C, 30-D, 30-E and 30-F.)

Mr. Corinblit: That completes this particular offer at this time, your Honor.

The Court: Ladies and gentlemen of the jury, we are about to take another recess. Again it is my duty to admonish you you are not to discuss this case with anyone, you are not to allow anyone to discuss it with you, and you are not to formulate or express any opinion as to the rights of the parties until the case has been finally submitted to [1407] you for decision. You will now be excused until 15 minutes after 11:00. Court will stand in recess until 11:15.

(Recess.) [1408]

The Court: Is it stipulated the jury are present and in the jury box?

Mr. Corinblit: So stipulated.

Mr. Mitchell: Yes.

The Court: You may proceed.

(Testimony of Alex Schreiber.)

Q. (By Mr. Corinblit): Mr. Schreiber, turning first to the distributor Universal. After you wrote the letter identified as Plaintiff's 14-A inquiring about first-run pictures and received a reply from Mr. Blake, which is Exhibit 14-C for identification, which has already been admitted into evidence, and I will show you that——

A. Yes, I received that.

Q. Now, I call your attention to the reference in the last paragraph which states:

“But *it our* thought that it would be better for you to discuss this in detail with our western district manager, Mr. Barney Rose, and/or our Los Angeles branch manager Mr. William Marriott when you come out here in March.”

Now, Mr. Schreiber, did you have a discussion with Mr. William Marriott after you received this letter? A. I did.

Q. And what was the approximate date of that meeting, if you recall?

A. I believe that was in April 1950 before we opened [1409] the theatre.

Q. Now, where did you go to talk to Mr. Marriott?

A. In Mr. Marriott's office, I believe. I went with my son Max to visit—to discuss this with Mr. Marriott.

Q. And where is Mr. Marriott's office located? Is that where the Universal office is in Los Angeles?

A. Yes, they are on South Vermont Avenue.

Q. Is there an area down near Vermont and

(Testimony of Alex Schreiber.)

Washington Boulevard, an area that is referred to as Film Row? A. That is correct.

Q. And that is the place where all the distributors have their Los Angeles offices, is that correct?

A. Most of them have them right on Vermont, although Paramount had theirs on the side street and Metro has theirs on Cordova Street.

Q. But they are all within a few blocks of each other? A. That is correct.

Q. All right. Now, when you went to see Mr. Marriott and had a discussion with him who were present? A. My son Max.

Q. And Mr. Marriott? A. That is right.

Q. And yourself? A. That is right.

Q. Anybody else? [1410]

A. No, nobody else.

Q. Will you tell me what you said to Mr. Marriott and what Mr. Marriott said to you?

A. Well, I told Mr. Marriott that my son and I—first of all I came to meet him personally because I believe that was the first time we had met him and we came to see him about getting first-run Universal pictures nonexclusive in the Paramount Theatre, and that we would like to run their pictures; that we were going to have a beautiful theatre. We expected to open real soon and we were sure that we would be able to pay the distributor or Universal a large film rental on their bigger and better pictures if we were permitted or had the opportunity to negotiate with him for first-run pictures.

(Testimony of Alex Schreiber.)

Mr. Marriott seemed to be very evasive and——

Mr. Mitchell: I move that be stricken out.

The Court: It may go out.

Mr. Mitchell: Can't this witness be instructed to say what they said instead of making these comments?

The Court: It is not what the party seemed to think but what they said and did.

The Witness: I am sorry. I just can't—I can't seem to remember that.

He said that he couldn't give us any first-run pictures; that he is just the branch manager; that it would still have [1411] to be up to Mr. Barney Rose or Mr. Blake or New York to make the decision, but he was sure that they wouldn't get the pictures because they were playing a combination of the five theatres and that he was sure we could not break in or we could not play day and date with the combination that was now playing their pictures.

I believe I told him all about the theatre and told him that I believed that Universal pictures one time or another had played at the Loyola Theatre, which was just three blocks from our Paradise, on the same side of the street; that we were going to have a larger theatre than the Loyola and if the Loyola would have played their pictures first run with downtown, or words to that effect, then Hollywood and the first run—I saw no reason why we couldn't play it; that the Fox people through their Loyola Theatre have established Westchester as a first-run area, a community by itself.

(Testimony of Alex Schreiber.)

And I am pretty sure I told him that because I told practically all the distributors the same thing, that Westchester was a separate community and the Loyola Theatre established it as a separate community by playing pretty near everybody's pictures first run.

And he, of course, said: "Well, I just work here," or words to that effect. It wasn't him. He didn't have the authority. I would have to take it up with New York or [1412] Barney Rose, who was a division manager or district manager, or Mr. Blake. He couldn't do any more. He knows the neighborhood. He goes to the airport quite often. It looks like it is going to be a beautiful theatre and we should do good business.

Now, I made a memorandum of that meeting and I don't know if there is anything else that I told him at that time. I would have to refer to my memorandum. [1413]

Q. All right. I think you have stated substantially all that is contained in your memorandum, Mr. Schreiber, but I will show you Plaintiff's Exhibit 14-D, which is the memorandum. I will first ask you whether you made this memorandum on or about the date of the meeting.

A. This memorandum has a date of April 12th at 1:15 to 1:45 in the afternoon. That would be 1950. I made this memorandum either that night, the next day, or the second day. I had this memorandum made.

Q. All right. I will ask you if that memorandum refreshes your recollection in any way as to

(Testimony of Alex Schreiber.)

any other matters that you have not testified to concerning your conversation with Mr. Marriott.

A. Yes. Mr. Marriott said that Mr. Al O'Keefe, who was one of the sales executives in New York, asked him if I had been in the office yet to see him. He said naturally he told Mr. O'Keefe that I hadn't been in the office.

Yes, that is about what I said. I may have used a different word here or there.

Q. Now, Mr. Schreiber, the Paradise Theatre never obtained Universal pictures on first run Los Angeles during the period August 1950 to September 1951, did they?

A. We did not receive any Universal pictures first run.

Q. Now, turning to Loew's for a moment, already in evidence are the letters of February 6, 1950, that you sent to [1414] Los Angeles and New York requesting first run pictures from Loew's, the opportunity of first run pictures for Loew's, and the replies from Loew's.

Did you subsequently have a conversation with representatives of Loew's in Los Angeles?

A. I did.

Q. About approximately when was that conversation?

A. That was in March or April 1950.

Q. All right. Where did that conversation take place?

A. At the Metro office on Cordova Street in the Film Row area.

(Testimony of Alex Schreiber.)

Q. In Los Angeles? A. In Los Angeles.

Q. Who was present at that meeting?

A. My son Max and I visited the Metro office and we met Mr. Hickey.

Mr. Hickey called in the office, when we got there, he called in Mr. Sam Gardner, who was one of his assistants or district managers or division managers. He called in Mr. Tom Aspell, who was the branch manager, and he called in, I believe, a fellow by the name of Calihan, who was the office manager, and he called in Mr., I believe, Alex Weismann, a city salesman, all in the room at the same time.

Naturally, we introduced ourselves to all these gentlemen and we started to tell them, Max or I, I did most of [1415] the talking, we told them we were going to build this Paradise Theatre, told them about the seating capacity, the location, and, of course, they acknowledged that they knew about the theatre going up, that New York told them that I was going to come in, or they suggested I go in and see them.

He said he had copies of the letters, he had my letter, and I think Mr. Hickey said something about expecting me to come in sooner.

We talked about first run pictures. I told Mr. Hickey and the gentlemen in the room that I saw no reason why we can't have an opportunity to negotiate for first run Metro pictures, non-exclusive, with the only clearance that we asked was over the

(Testimony of Alex Schreiber.)

Loyola Theatre only, which is just three blocks from us.

That Westchester was a separate community, it had been proved as a separate community by the Fox Theatre people, because they played Metro pictures at one time or another in Westchester day and date with Los Angeles downtown, day and date with Hollywood, that they had played day and date in the Loyola, and I saw no reason why we can't have first run pictures the same as the Fox Theatres.

That we were going to be a bigger theatre, and we were going to be as nice, we would charge as much money.

I practically pleaded with them to give us an opportunity to run first run pictures the same as the Fox [1416] theatre, that we were on the same side of the street, just three blocks apart.

The answer was, "No, we can't give you them, and the pictures we ran was a long time ago and they were small pictures, and it don't mean nothing, and we are not selling nobody pictures first run except the Grauman's Egyptian and Loew's State," and I believe he said the Fox Wilshire. I am not sure at that time because at one time Metro did serve three first run houses, and they weren't doing it any more.

I said, "That's all right, you may not be doing it now, because Fox is using most of their own pictures in the Loyola Theatre. They wouldn't have room to play Metro, Paramount, Fox, Universal, Columbia, RKO, they can't, it is impossible, but

(Testimony of Alex Schreiber.)

they did play some of your pictures, and I presume"——

I think I said to them if they had some open time and they needed a Metro picture, that they would give it to them.

He said they would not give it to them.

Then I told them about the business that I understood—when I checked the Loyola Theatre, the business they were doing in there, that the area was a good area and I told them about the houses, I told them about the business. In other words, I gave the best sales talk that I could, literally speaking, to them, to try to convince them that they [1417] should sell us or negotiate first run non-exclusive Metro pictures.

The answer practically was, "You can have 7 days, bidding against La Tijera and the Inglewood theatres," I believe he said.

I told him, "Why do we have to bid against those?"

He said, "Well, J. Isenberg, the attorney from New York, was here, and Mr. Gardner drove Mr. Isenberg all around the area," and they had decided that we are in competition with the Inglewood theatres and the La Tijera, and, therefore, we got to bid against these theatres.

Of course, I objected to that and we left the office. We just couldn't get anywhere outside of the fact that they said we would have to bid against these Inglewood theatres.

Now, I got a long note on that and I am sure

(Testimony of Alex Schreiber.)

when I made that memorandum, there may be some other things in there.

Q. Mr. Schreiber, I will show you Plaintiff's Exhibit 6-G for identification and ask you whether or not this is a memorandum which you prepared or dictated and had typed on or about March 30, 1950, about the time of the meeting? First, could you answer that question? A. Yes.

Q. Now, I will ask you to examine that exhibit 6-G and ask you if that refreshes your recollection as to any other [1418] matters that took place at the meeting with Mr. Hickey and the other people.

A. In this first paragraph——

Q. Don't read that to the jury, Mr. Schreiber. The only question is, does it refresh your recollection as to what was said?

A. Yes. This—can I tell in my own words now without reading it? [1419]

Q. In other words, is your recollection refreshed as to any matter contained therein? What do you remember about it?

A. In talking to Mr. Hickey about the first run, and I thought we were entitled to the first run in Westchester because the Fox Theatre people already established first run, Mr. Hickey said no, he couldn't do it and after some time he said he would like to see—he would like to see Loew's take back the Loew's Theatre and run their product in there first run only, just in the one theatre, and run in about 14 or 15 other theatres around the area so that he could get more film rental. But he knows it

(Testimony of Alex Schreiber.)

wouldn't be done or couldn't be done but that is—definitely he did tell my son and I that.

Well, I believe I said that, previously, about we thought we could give the film distributors equally as much money as the Loyola was paying for product. And I also—I don't know whether I said that I showed Mr. Hickey some airplane pictures of the area showing the growth and also Mr. Hickey said that he didn't realize that that area was growing so fast; that he knew the area but he didn't realize it was growing as fast and that there were as many houses there. And I also told him about we were contemplating building two more theatres in the Valley. That was the one on Laurel Canyon and Weddington and the other was Laurel Canyon and [1420] Victory Boulevard. We were supposed to build a theatre and Mr. Hickey said he wished that the theatres were built now and he would have sold me—he would sell us first run pictures in the Valley.

Q. Did Loew's sell the Paradise Theatre first run pictures? A. They did not.

Q. Mr. Schreiber, after you had written your letter of February 6, 1950—incidentally, it is established—let us get it clear again that the letter of February 6, 1950, was drafted by Mr. Simon, to a substantial extent—I don't know whether it was completely drafted by him, but drafted to a substantial extent by Mr. Simon, is that correct?

A. I don't remember whether he helped me with the first run or not. He may have.

(Testimony of Alex Schreiber.)

Q. I think he testified that he did. Now, Mr. Schreiber, after you sent the letter to New York and to Los Angeles, which are Plaintiff's Exhibit 10-A and 10-B, which are duplicates of the letter already read into evidence, you testified that you received a letter from Mr. Haynes dated February 9, 1950, which I would like to read to the jury. It is already in evidence. It is Exhibit 10-C. [1421]

* * * * *

Then as you testified, you sent them a letter dated March 6th, which is Exhibit 10-D which reads as follows after the salutation to Warners: [1422]

* * * * *

Then on March 9th you received a letter from Mr. Greenberg, Exhibit 10-E, which is in evidence. It reads—it is on the stationery of Warner Bros. Pictures Distributing Corporation. It is addressed to you and states:

* * * * *

Now, after that correspondence, Mr. Schreiber, did you have a conversation with representatives of Warner Bros. in Los Angeles concerning the Paradise Theatre? A. I did.

Q. And with whom was that conversation?

A. I went to Warner Bros. with my son.

Q. And who was present at the meeting?

A. Mr. Herbel, the district manager, and Mr. Fred Greenberg, the branch manager. [1423]

Q. And will you give the approximate time of that, please?

A. That was in March or April of 1950.

(Testimony of Alex Schreiber.)

Q. Now, what was said by you and what was said by either Mr. Herbel or Mr. Greenberg at that meeting?

A. Well, after the proper introductions I asked Mr. Herbel and Mr. Greenberg for the opportunity to run the Warner pictures first run non-exclusive with a clearance only over the Loyola Theatre—only in Westchester, and day and date with the other Warner theatres.

And I told Mr. Herbel the same thing about Fox establishing Westchester as a separate community or separate city and that I saw no reason why, if Fox can have their pictures, and I was pretty sure they had played one or two pictures up to that time, and if they did, I told them the other distributors were all playing their pictures, one or two or three previous to this date in the Westchester area, and I was pretty sure he had played one or two or maybe three or four Warner pictures in the Loyola first run day and date with downtown and day and date with Hollywood and day and date with Wilshire Boulevard, why can't we have non-exclusive first run pictures with clearance only over the Loyola. We didn't care who else played the pictures and I told him about the beautiful theatre and what we planned to have and some of the appointments and some of the [1424] equipment and words to that effect. I described the Paradise Theatre—what it was going to be, and it was going to be open soon, and I am sure we could pay the distributors as much money as they were getting in any other first

(Testimony of Alex Schreiber.)

run house—as much as the Loyola paid them for their pictures when they played them—maybe more than they received from the Loyola because we were going to have a bigger house. It would be a newer house. We would like to play their pictures first run non-exclusive, and Mr. Herbel did most of the talking, and Mr. Herbel said, “No, that is impossible. We can’t sell you first run. We have our own three theatres. They are our own. And we lost last year \$80,000 in our theatres and we are not going to permit any other theatres to run day and date with us because we may lose more money.”

And I, of course, when he said that, I practically laughed and I told him how ridiculous it was to think that people from Westchester were going to run all the way downtown or in Hollywood or to Wilshire Boulevard to see a picture, and if we had it at our place, they would come to our place and he would get more film rental from us than he would from what he would lose it percentage-wise from those three theatres if people went from our Westchester area to any one of those three theatres and he said, “Well, regardless of what—” I think, he or they are not going to [1425] sell us first run pictures—that he didn’t know exactly why they lost \$80,000 and I told him he couldn’t blame it on the Paradise, the Paradise wasn’t open, but why they lost it he didn’t know, but he thought it might be very bad pictures, it may have been the times and I think at that time he named some pictures or told me about a lot of pictures that were very disap-

(Testimony of Alex Schreiber.)

pointing in receipts and had everybody in the industry puzzled as to why it wasn't doing more business.

Then he told me—he said: “We checked the neighborhood and you have got to bid for our pictures. We will let you bid on the 7-day availability.”

And of course we objected to that because we told him we were not in substantial competition, or words to that effect, with any of these Inglewood theatres. We told him that we would play day and date if we can't get first run pictures, we will play the 7-day on negotiation. We wanted to negotiate for the pictures because there is quite a difference between negotiating and bidding. We would be glad to do that, but we didn't want to bid against theatres that were not in substantial competition with us, and we saw no reason for it, and we would play day and date with them and we had what was supposed to be a more extensive theatre when it was completed than practically any other theatre in the entire area and words to that effect. [1426]

Now, I also made a memorandum on that. There may be some other things, but I think that is the highlights of my discussions and my son's. [1427]

Q. I will show you Plaintiff's Exhibit 10-F-1, and ask you if this is a memorandum which you dictated and had prepared at or about the time of the meeting with Mr. Herbel and Mr. Greenberg? Is that the memorandum you had prepared?

(Testimony of Alex Schreiber.)

A. This is the memorandum and it is dated March 30, 1950.

Q. All right. Now, will you examine that and state if that refreshes your recollection as to any additional matters or as to any of the matters that you have testified about.

A. Well, first of all, he said that he discussed it with New York and it was his decision with New York not to serve us first run.

Another thing I see, I just saw it at a glance, he didn't know what position Warners would take after the divorcement, because the government was making these producer-owned theatres separate the theatres from the product, and that is what he had reference to when he said, well, he didn't know what they would do or what their opinion would be after the divorcement when the theatres would be separated from production.

He also told me about trouble that Marco Wolff was having, and he also made a request for first run product for his Baldwin Theatre and he wasn't going to get it, or he is trying to get first run product for the Baldwin and he didn't [1428] get it.

There is three other matters that I didn't mention.

Q. Is your memory refreshed with respect to certain matters? A. Yes.

Q. All right.

A. First of all, I make a memorandum here that I did not talk to him about the 7 day availability bidding, like I did with the other distributors.

(Testimony of Alex Schreiber.)

I had made a memorandum here I did not tell him that Metro had offered me 7 days bidding, because I have a memorandum here that I asked for first run only and didn't think I should mention the Metro to him, because he didn't mention it to me, and previous to this I made a statement that we talked about it.

I may get some of these meetings a little bit mixed up with one another, because that was my talk with practically everyone, and I thought I had mentioned it to Mr. Herbel, but according to my memorandum, I did not mention the 7 day and he did not mention it to me.

But Mr. Herbel did say that at one time when I told him we were also planning two theatres in the Valley, he told me that Warner Bros. was considering very seriously going into the Valley, also, with a theatre, but because of the government decision breaking up the theatres from production, they had to give up the idea. [1429]

Q. Mr. Schreiber, did the Paradise Theatre ever get Warner Bros. first run during the period August 23, 1950, to September, 1951?

A. They never received one picture.

Q. After your letter of February 6, 1950, to Paramount, you received a letter which is Exhibit 1-C, from Mr. Taylor, dated February 9, 1950, which I would like to read to the jury at this time, addressed to you, to Mr. Schreiber: [1430]

* * * * *

The very next day after you had received this

(Testimony of Alex Schreiber.)

letter from Mr. Taylor which I have just read, you testified you received a letter from Mr. Schwallberg from New York which, after the address to you, said:

* * * * *

Now, after you had received the letter from Mr. Taylor telling you they had franchises and the letter from Mr. Schwallberg stating he was asking for a report, did you visit and have a discussion with Mr. Taylor in Los Angeles? A. I did.

Q. Who was present at that meeting?

A. My son Max and Mr. Taylor and Mr. George Smith, the division or district manager for Paramount Pictures. [1431]

Q. Approximately when did that meeting take place?

A. I believe that was in March or April, early part of March or April.

Q. Of 1950? A. 1950.

Q. What was said by you and what was said by Mr. Taylor or Mr. Smith at that meeting?

A. That meeting, I also asked Mr. Taylor and Mr. Smith for an opportunity to run their pictures non-exclusive first run Los Angeles in the Westchester area.

Mr. Smith did most of the talking, because he was the superior to Mr. Taylor. He told me that that was practically impossible and that they wouldn't consider it, that they had a franchise with the Hollywood Paramount and with the Downtown Paramount Theatre and that was the only two

(Testimony of Alex Schreiber.)

theatres that were running their pictures first run and, therefore, we could not get first run pictures.

When he told me that was the only two theatres that were running Paramount pictures first run, I immediately called his attention to the fact that the Loyola Theatre played Paramount pictures first run Los Angeles day and date with Hollywood and day and date with downtown at one time or another, and why can't we run Paramount pictures first run? The Fox theatre people, they managed to run first run in Westchester, and why can't we run first run?

I told him about the theatre, the size of the theatre, what we had planned to build, and it would be finished soon, in May or June or July, whatever time I used, and we would have just as good opportunity to gross as much money as the Loyola Theatre, that we would be able to pay them as much film rental as the Loyola Theatre.

That Fox can get what they want, and they were getting what they wanted. They were getting pictures first run from practically every distributor in Westchester. Why can't we get them?

We practically begged each one of these fellows, we told them we had a big investment, we had undertaken a loan obligation, and why can't we get pictures? That we would be open soon and wanted the pictures.

He told us again they had a franchise and they had to give them to the Paramount, and they weren't going to do anything, and there was a lawsuit pending, and the Baldwin requested first run,

(Testimony of Alex Schreiber.)

and they didn't give it to them either, and that was in court, the Paramount case was in court and until it was all settled, they weren't going to sell us any first run pictures.

I told them I understood franchises were illegal, that the government had ruled franchises are illegal, and he told me in words and effect, "Illegal or not illegal, we are not going to sell you first run pictures." [1433]

That they had made a study of the area, they know the area, and the best they will do for us is they were going to have two 7 day availability pictures, and they would give us an opportunity to bid for one of the 7 day pictures, and they also are going to have two 14 day pictures. They studied the area and it was a big area, and it was quite a problem, or words to that effect, and we could bid for the 7 day and if we lost for the 7 day, we would have to bid for the 14.

I told them, "We don't want to bid. We want to negotiate. If we can't get first run, we would like to negotiate for their pictures. We don't want to bid for them."

We got the same answer from Mr. Smith as he stated originally, you got to bid for the pictures and there is going to be two 7 days and two 14 days, and that was the best they would do for us, and they either had discussed it with New York or decided themselves on it.

I also have a memorandum on that, Mr. Corinblit. Maybe there is some more stuff in there, but

(Testimony of Alex Schreiber.)

the highlight was why can Fox get first run pictures and their pictures, and we can't get no Paramount pictures.

Q. I will show you Plaintiff's—

Mr. Mitchell: I move the highlight be stricken as argument.

The Court: It may go out.

Q. (By Mr. Corinblit): Mr. Schreiber, I will show you [1434] Plaintiff's Exhibit 1-E and ask you whether or not that is a memorandum which you prepared at or about the time of this meeting you describe with Mr. Smith and Mr. Taylor.

A. Yes, April 12, 1950. [1435]

Q. That was the date of that meeting, is that correct? A. That's right.

Q. All right. Now, I will ask you to examine Plaintiff's Exhibit 1-E and tell me if that refreshes your recollection as to any other matters that were stated at that meeting or to any matters that you have testified to?

A. Well, when I had the talk with them, the discussion, Mr. Taylor said to me, "Evidently you don't read your mail," and I asked him what he meant.

He said, well, he said, "Didn't you get a letter from me that we told you that we had a franchise?"

That is where I answered him that I thought that the franchises were illegal. He wanted me to bid for the seven-day or 14-day availability and he would send me the forms. They send out the forms to ask you to make an offer, and I said, no, I would

(Testimony of Alex Schreiber.)

negotiate, would be glad to negotiate with them if we couldn't get first run product, and he told me that it is practically the same thing, bidding and negotiating, and I told him there is no such thing, that the two are together just as different as there is day and night.

I didn't use "day and night," but I told him they were different and I still insist that they are different.

Q. Mr. Schreiber, if that refreshes your recollection you may testify to it, but don't read from it.

A. Yes, it does refresh my recollection. They stated [1436] at that meeting that they had a leap-frog availability or clearance and I told them that I had never heard of the words "leap frog," what does he mean by "leap frog," so he started to explain that if this theatre takes clearance over this theatre and this theatre takes clearance over this theatre and this theatre takes clearance over that theatre, it is just leap-frogging all the way down so the fellow on the end can get clearance on the fellow on this end.

I told him I never heard of it before and that the distance between one end and the other end was just ridiculous, which included the Southside Theatre, which was so many miles away from us, and he said, "Well, that is the leap-frog clearance," and they were going to have two prints.

He also made mention—this memorandum reminds me that he made mention about a dividing line. They didn't know where they were going to

(Testimony of Alex Schreiber.)

have the dividing line and it was almost impossible to say where the dividing line was.

I called their attention that just recently to this meeting on April 12th they had served the Loyola Theatre with Captain China, just recently. I called that to their attention.

When I called his attention to Captain China he said it was just a coincidence, that the Loyola group of Fox houses played Captain China; the two Paramount Theatres were all booked up in their bookings and they didn't have room to [1437] play their pictures in the two Paramount houses, so they played Captain China in this group.

So I said, "Well, what about the other pictures that had played there previously to that," so Mr. Smith or Mr. Taylor said, "Well, that was a coincidence also. It was just one of those things where the Paramount was booked up and they couldn't run it and they were four to eight weeks behind in their dates and rather than wait for a later play date," or words to that effect, they gave it to the Fox group. And, of course, when they told me that I told them to give me some of those pictures too and then Mr. Taylor in a joking way said to me, "Well, we would like to sell you some of our newsreels—we will sell you some of our newsreels first run."

And then it also refreshes my memory. I told him there were many—there was over 31,000 people in that area and I thought the people of Westchester were entitled to see first-run pictures just as

(Testimony of Alex Schreiber.)

soon as possible without having to wait to a later date to see the pictures.

Q. Now, Mr. Schreiber, did you in the Paradise Theatre ever receive any first-run pictures from Paramount during the period August, 1950 to September, 1951? A. Not one picture.

Mr. Corinblit: That is all.

The Court: Ladies and gentlemen of the jury, we are [1438] about to take another recess, and again it is my duty to admonish you that you are not to discuss this case with anyone, you are not to permit anyone to discuss it with you, and you are not to formulate or express any opinion as to the rights of the parties until the case has been finally submitted to you.

With that admonition we will now recess until 2:00 o'clock this afternoon.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 2:00 o'clock p.m. of the same day.) [1439]

July 25, 1956, 2:00 o'clock p.m.

The Court: Is it stipulated the jury is present in the box?

Mr. Corinblit: So stipulated.

Mr. Johnson: Yes.

The Court: You may proceed.

ALEX SCHREIBER

the witness on the stand at the time of the recess, having been previously duly sworn, was examined and testified further as follows:

Direct Examination—(Continued)

Q. (By Mr. Corinblit): Mr. Schreiber, we had finished talking about your first visits to Paramount.

I will first state that in evidence are the letters you sent to Columbia in February, 1950, asking the representatives of Columbia if they would license you a non-exclusive first run, Exhibits 26-A and 26-B, which are the same as the other letters.

There is a letter dated March 6, 1950, which is Plaintiff's Exhibit 26-D, which I would like to read. It is a letter from Schreiber to Montague, Columbia Pictures Corporation, New York. [1440]

"Dear Abe:

"I did not receive an answer to my letter of February 6 regarding the first run product for the Paradise Theatre, Los Angeles. I presume you have been very busy and will abide an answer at your earliest convenience.

"Sincerely yours."

Now, subsequently, after this letter, did you have a discussion with representatives of Columbia in Los Angeles? A. I did.

Q. With whom did you have that conversation?

A. Mr. Wayne Ball. He was the branch manager at the time.

Q. Who was present besides Mr. Ball and yourself?

(Testimony of Alex Schreiber.)

A. I believe my son Max was with me.

Q. Approximately what date was that meeting?

A. I believe that was in March or April.

Q. All right. Now, will you tell us what you said to Mr. Ball and what Mr. Ball—will you identify Mr. Ball, please? He was branch manager, did you testify?

A. I believe he was branch manager.

Q. Now, will you tell us what you said and what Mr. Ball said?

A. When I met Mr. Ball, I asked if I could see Mr. Safron also, Jerry Safron, because Jerry Safron was the district [1441] manager of this area of Columbia Pictures.

Mr. Ball told me he was not in, but he would be glad to talk to me.

I spoke to Mr. Ball and requested first run, an opportunity to buy first run non-exclusive their pictures in Los Angeles.

Mr. Ball told me that we couldn't get first run on their pictures, that they were already committed, or they were already sold to the other theatres, I believe it was RKO Pantages and Hillstreet, and there was no chance for us to get first run pictures, and if they gave them to us, the theatres in Inglewood would want it, other areas would demand a first run, and they just couldn't give out a first run, multiple first run, or words to that effect.

In fact, he told me that the La Tijera Theatre tried to get first run on Columbia pictures and they refused it, also. In fact, they said that the La

(Testimony of Alex Schreiber.)

Tijera started a lawsuit against Columbia to get first run pictures and they did not get the pictures.

And he was positive or he was sure that we would not get first run Los Angeles on Columbia pictures.

He told me that he knew the Fox Theatre people very well and they are not doing much business at the Loyola Theatre and, in fact, they expressed an opinion to him that they thought that they would like to go on, or should go to a [1442] 21 day house.

I told him he was just mistaken in his figures about what the Loyola business was, that I had checked the house and they were doing a very big business.

I naturally explained to him that I thought we should have an opportunity to play the pictures first run in Westchester day and date with the other theatres that they were playing first run, because we were going to have a larger theatre or as large as the Loyola Theatre.

I believe I showed him some pictures. I told him about the new theatre, I told him about the size, I told him about the possibility that we could gross as much business as the Loyola Theatre, and I pointed out all the fine features that I thought it was necessary to convince him that we were entitled to first run pictures.

And I told him, I am pretty sure, that we didn't want any clearance on any theatre except the Loyola Theatre, that is the only theatre we wanted clearance on as far as first run pictures were concerned.

(Testimony of Alex Schreiber.)

I don't remember whether he said anything about we would have to bid for 7 day against the Inglewood houses or not.

I have a memorandum on that meeting, also, and if I may refresh my memory, I can tell you whether we discussed 7 day or not. [1443]

Q. I will show you, Mr. Schreiber, what has been marked as Plaintiff's Exhibit 26-E for identification and ask you first if you prepared or caused to be prepared the Plaintiff's Exhibit 26-E?

A. I did.

Q. And did you cause that to be prepared on or about the time of the meeting?

A. After the meeting of April 12th when I visited Mr. Ball with my son Max.

Q. I will ask you to examine Exhibit 26-E and state if anything in there refreshes your recollection as to any other subjects that were discussed between you and Mr. Ball or with respect to anything else that you have testified to?

A. He told me that we couldn't play their pictures with the other first run houses. However, if the combinations that were now using their product first run don't play the pictures then he will give us an opportunity to play the pictures, to bid for the first run pictures against the Loyola Theatre, but he didn't think that would ever happen.

He did offer us the 7-day availability but said we would have to bid against Inglewood and that was the advice of their legal department—Mr. Irving Morris, advice of legal department they would not

(Testimony of Alex Schreiber.)

let us have first run and he [1444] also made mention about that they did not answer my letters on the advice of New York because New York didn't believe in answering letters because so many lawsuits that were pending, and they didn't want to write something that may start a lawsuit or create one, but he thought I was at least entitled to the courtesy of an answer to my letter.

I told him that I saw no reason why we can't have the first run product because the Loyola was using practically everybody's product at one time or another first run, and he told me that he thought it was out of the ordinary if I would get first run pictures there.

He asked me if I thought Inglewood was entitled to first run and I told him yes, that they were a separate community, far away from us and that they would be entitled to it also on account of the population, and that we thought we were entitled to first run and would like to play their pictures first run because we wanted to take advantage of all the newspaper publicity on the first run pictures, the articles that appear in the movie magazines, what is said about the pictures over the radio, and all the money that is spent—literally all the money that is spent advertising these pictures by playing the pictures early and playing them on first run. By doing that we could take advantage of all of that advertising.

I told them I was planning to go to New York to see [1445] Mr. Montague or Mr. Rube Jackner but

(Testimony of Alex Schreiber.)

not for the purpose of going over his head or Jerry Safron's head and that I wanted to be in position to tell them when I was in New York that I already talked to Mr. Ball and Mr. Safron, but I was sorry Mr. Safron wasn't in; and that I was sure that New York would have the final say on who could get the pictures and who could not.

We also talked about some of the new theatres, and the old theatres that weren't doing very much business and the distributors were at a loss to know why—what happened to business, that there wasn't, that they weren't doing the business they anticipated, and that was brought up at the discussion about he knew the Fox Theatre people—he was very close to them and they weren't doing the business at the Loyola they expected, and they thought they ought to go to 21 days or wished they could go to 21 days.

Q. Mr. Schreiber, after this conversation with Mr. Ball, it is also true, is it not, during the period August 23, 1950, to September, 1951, you never received any first run pictures from Columbia, is that correct?

A. We did not receive one picture from Columbia first run.

Q. With respect to RKO in evidence are the letters of February 6, 1950, which you wrote to Los Angeles and to New York, and also the letter of February 8, 1950, to Mr. [1446] Cohen in which he just states: "You will get an answer" and then the letter from Mr. Zimmerman to Paradise Thea-

(Testimony of Alex Schreiber.)

tre, February 23, 1950, which reads as follows. It is addressed to Paradise Theatre Building Corporation and reads:

* * * * *

Now, subsequent to this letter, Mr. Schreiber, you had a conversation with representatives of RKO in Los Angeles, is that right? [1447]

A. I did.

Q. And with whom was that conversation?

A. With Harry Cohen, the branch manager of RKO Pictures.

Q. Where did you have that meeting?

A. At the RKO office on South Vermont Street.

Q. And who were present?

A. I am not sure whether my son was there with me or not. If he was there, that would be just the three of us.

Q. About when did the meeting take place?

A. In March or April.

Q. 1950? A. 1950.

Q. Will you tell us what was said and what Mr. Cohen said?

A. I went in to meet Mr. Cohen. I hadn't met him yet and I went in to introduce myself to him and if my son was with me, introduced my son.

I took my son along with me because in most places—because when I would go to Detroit, I wanted him to know, if my son came into the office who he was, and I told Mr. Cohen that we wanted to get acquainted and after receiving the letter from Mr. Zimmerman, from the legal department, I

(Testimony of Alex Schreiber.)

didn't think there was much that he could do because after [1448] all he had to follow the instructions of New York and he, of course, said that he was following New York's instructions and if we wanted pictures we would have to bid against the Inglewood theatres. I told him we came in to buy first run pictures and he said there was nothing he could do; that it was strictly in the hands of New York. They would decide who should get the pictures and who shouldn't, or words to that effect. I don't think we stayed with Mr. Cohen very long except that I believe he said he knew the area and it should be very profitable.

He said it was a fast growing area and I don't know whether we had shown him the pictures of the proposed theatre, and whether I told him all of the fine features, but I believe I did.

Whether I made that memorandum or not, I don't know, but most likely I told him about what we planned to build and how we were going to build it and the size and all of the fine features that we were planning because I feel pretty sure we told him that. [1449]

Q. Mr. Schreiber, I show you Plaintiff's Exhibit 21-E and ask you if you prepared or caused this memorandum to be prepared on or about the date that it bears.

A. Yes. That was prepared on April 13, 1950. It was late in the afternoon. I knew we weren't there very long.

Q. When was the meeting?

(Testimony of Alex Schreiber.)

A. April 13th, from about 4:15 p.m. to about 5:15 p.m.

Q. Will you examine Plaintiff's Exhibit 21-E and see if that document refreshes your recollection in any way concerning any other matters that were discussed with Mr. Cohen or any matters that you may have testified about.

A. Well, it verifies that my son Max was with me.

I also told Mr. Cohen I was planning to go to New York and I would go in and see Mr. Zimmerman of their legal department.

As I said before, I told him about the location and the fine appointments that we were planning for the theatre.

And I also told him the reason that we wanted first run RKO pictures, negotiated, was the fact that the Loyola Theatre also played RKO pictures first run at one time or another and that they had established the area as a first run, separate community, separate theatre, and I saw no reason why we shouldn't get first run; the Fox theatre gets first run RKO pictures, why can't we get first run RKO pictures? [1450]

Of course, he said, well, they get very few pictures, they only got a Tim Holt, westerns is all they ever served him, but they are not serving him now.

I remember distinctly talking about that, when he said they are not serving now, I said, "Well, you did serve them. Why can't you serve us now?"

He said, well, it is strictly out of his hands, it is

(Testimony of Alex Schreiber.)

in the legal department in New York, they handle the sale of pictures, and he was just following New York's orders.

We talked about some mutual friends that we had known.

Q. Mr. Schreiber, did the Paradise ever receive any first run pictures from RKO from August 23, 1950, to September 1951? A. Not a picture.

Q. In evidence now are exhibits pertaining to your original letters to United Artists, Exhibits 30-A and 30-B and -C, as well as 30-D.

Then there is a letter here that ought to be read, two letters. One is Exhibit 30-E, a letter from O'Laughlin to Schreiber, March 9th. [1451]

* * * * *

Did you have a Los Angeles drive-in theatre, Mr. Schreiber? A. No, I did not.

Q. This was just an error? A. An error.

Q. An error in reference.

Then your letter of March 22, 1950, returned to Mr. O'Laughlin, reads as follows: [1452]

* * * * *

After this March 22nd, did you have a meeting with Mr. O'Laughlin? A. I did.

Q. About when did that meeting take place?

A. In March or April.

Q. 1950? A. 1950.

Q. Who was present?

A. I believe both Mr. O'Laughlin and Mr. Calihan.

Q. Calihan or Calloway?

(Testimony of Alex Schreiber.)

A. I don't know, Calloway or Calihan.

Q. All right.

A. I don't remember whether my son was with me or not.

Q. That took place at the United Artists Exchange on Film Row? A. That is correct.

Q. And what did you say and what did either of these gentlemen say?

A. Well, when I went in there, as I say, I don't remember whether my son was with me or not, he may have been with me, we introduced ourselves to them and we told them that we wanted to have first run pictures non-exclusive with the first run theatres—in Westchester. We wanted to negotiate and we wanted the opportunity to negotiate for the pictures. [1453]

Mr. O'Laughlin, I believe, is the one that did the talking. He said we couldn't have the first run pictures, because, I believe, at that time they were playing their pictures in what they called the Music Hall group of theatres, that those theatres were running the pictures and we just couldn't get in with that group.

But we could have pictures on the 7 day, but no bidding. He didn't say we had to bid. He is the first man that said there would be no bidding. I remember that distinctly, which was different than the other distributors.

And he looked up the releases and he asked me when we planned to open the theatre, and I believe the date I gave him was approximate, and he looked

(Testimony of Alex Schreiber.)

up his release chart, when they release their pictures, and he told me then that he hoped we could be open in time so we could play his picture Champagne For Caesar, that he heard the reports from the studio, et cetera, and that it was going to be a very big picture and he would either like to see us open with that particular picture or play that particular picture.

Q. Subsequently, Mr. Schreiber, did you receive from United Artists during the period August 23, 1950, to September 1951 any first run pictures?

A. I did not.

Q. After this time, after this statement to you about playing the 7 days, no bidding, on United Artists pictures, [1454] did United Artists during the fall of 1950 deliver pictures 7 days without bidding?

A. You mean when we opened up?

Q. Yes. A. No, they did not.

Q. Finally, Mr. Schreiber, did you have a visit with representatives of Twentieth Century-Fox in the Los Angeles office with respect to the Paradise?

A. I did.

Q. Approximately when?

A. In about March or April.

Q. 1950? A. 1950.

Q. Who was that visit with?

A. If my son was with me, and I don't believe he was on that first meeting, I went to the Fox exchange to meet Mr. Clyde Eckhardt, who was branch manager and whom I had met either in Chicago or Detroit. I believe at one time Clyde Eck-

(Testimony of Alex Schreiber.)

hardt was division man or district man. He had a higher position than he had in the local office. That is where I met him originally. I went in there to get acquainted again or to renew our acquaintance.

Buck Stoner, who formerly used to be with Metro-Goldwyn-Mayer, who left Metro and went over to Fox, he came in and got to talking. [1455]

Of course, they said, "If you want any Fox pictures, you know our pictures are sold to the Loyola. We have no pictures for you."

I said, "I know that. I know the pictures are sold at the Loyola and you are selling your pictures to Fox, but I did not come in to ask you for Fox pictures. I wanted to get acquainted with you again, renew my acquaintance."

But that I saw no reason why I couldn't have some pictures, and if they thought that they had a big picture at any time that would warrant playing two theatres day and date, I would be glad to consider playing the Paradise day and date with their Loyola together if it was that big a picture, and I would be glad to consider it if they would give me an opportunity to play the picture.

We didn't stay there very long, because I remember Buck Stoner had an appointment and he wanted to take up some matters with Clyde Eckhardt, and I believe he said that—I have a memorandum on that—that he had a 5:30 appointment and it was already 5:40, so he had to leave, and I left, and that was about the end.

I have a memorandum on that, I believe, Mr. Cor-

(Testimony of Alex Schreiber.)

inblit. Maybe there is something in there that will refresh my memory on something else that was discussed.

Q. I will show you Plaintiff's Exhibit 18-A and ask you if you had or if you prepared or caused to be prepared this [1456] memorandum on or about the date that it bears.

A. Yes. This bears the date April 13, 1950, at 5:05 p.m. to 5:40 p.m.

Q. I will ask you whether that refreshes your recollection as to the matters you have testified about.

A. Well, they said that they noticed the location and it looks like we are going to have a beautiful theatre, and they pass there quite often on their way to the airport.

I also told them that I sent letters to New York to all the distributors, but I didn't send them any letter, that I didn't send a letter to their New York office because I thought they were obligated to serve their pictures in the Loyola Theatre, and that I did not come in to ask them for their pictures for that reason. I don't know whether I said that before or not.

Mr. Eckhardt said to me, "I understand you are building some theatres in the Valley."

I confirmed it and said we planned two theatres there, and I showed him some pictures of the proposed theatres in the Valley.

He made a memorandum on his calendar pad as to the name of the theatres, the location and the

(Testimony of Alex Schreiber.)

approximate seating capacity of these two theatres that we had discussed we were going to build in the Valley.

They wished me a lot of luck and said that they remembered [1457] the area since it was a four-corner area and it is a rapid growing area, and they thought we would do very good business, and that was about the end of the meeting.

Q. All right, Mr. Schreiber. Did you during the period August 23, 1950, to September 1951 receive any Twentieth Century-Fox pictures first run?

A. Not a single picture. [1458]

* * * * *

Q. (By Mr. Corinblit): All right, Mr. Schreiber. You did subsequently send a letter to Twentieth Century-Fox and that letter is dated—it is marked Plaintiff's Exhibit 18-B. I will show you Plaintiff's Exhibit 18-B—pardon me. This letter was sent by Mr. Seymour Simon on your behalf. I will show you Plaintiff's Exhibit—let me withdraw that for a moment.

Mr. Corinblit: Counsel, we have Plaintiff's Exhibits 18-B and -C which were sent and received by Mr. Simon. I take it we may waive foundation as far as the letters are concerned. Twentieth Century-Fox, I am sorry.

Mr. Johnston: I will stipulate the letters were sent and received.

Mr. Corinblit: We will offer Plaintiff's Exhibits 18-B and 18-C in evidence.

The Court: They may be received in evidence.

(Testimony of Alex Schreiber.)

(The exhibits heretofore marked Plaintiff's Exhibits 18-B and 18-C, were received in evidence.) [1461]

* * * * *

Q. (By Mr. Corinblit): Now, Mr. Schreiber, calling your attention to the letter of April 17, 1950, which was a letter from Mr. Seymour Simon to Twentieth Century-Fox in New York, a duplicate [1463] of that letter was sent to all of the other distributors, the major distributors, isn't that correct? A. I believe that is correct.

Q. Well, without bothering to read them, we will offer in evidence these letters and the exhibit numbers are as follows:

Plaintiff's Exhibit 1-F, a letter addressed to Paramount.

Plaintiff's Exhibit 6-H, a letter addressed to Loew's.

Plaintiff's Exhibit 10-F-2, a letter addressed to Warners.

Plaintiff's Exhibit 14-E, which is already in evidence. That is the Universal letter.

Plaintiff's Exhibit 21-F, a letter addressed to RKO.

Plaintiff's Exhibit 26-F, a letter addressed to Columbia.

And Plaintiff's Exhibit 30-G, a letter addressed to United Artists.

We will offer these letters in evidence, your Honor.

The Court: They will be received in evidence.

(Testimony of Alex Schreiber.)

(The exhibit heretofore marked Plaintiff's Exhibits 1-F, 6-H, 10-F-2, 21-F, 26-F and 30-G, were received in evidence.)

Q. (By Mr. Corinblit): Now, Mr. Schreiber, when you were——

The Court: Let us wait until the clerk marks them. [1464]

The Clerk: The reporter has them, your Honor.

The Court: Do you have the exhibits offered, Mr. Reporter?

The Reporter: Yes, your Honor.

Q. (By Mr. Corinblit): After these letters of April 17, 1950, by Mr. Simon to the various distributors in New York, did you make a visit to New York to discuss the matter of the Paradise Theatre with the responsible officials of the distributors in New York? A. Yes, I did.

Q. And did you meet Mr. Simon there?

A. Yes.

Q. And Mr. Simon was your attorney, is that correct? A. He was.

Q. And did you go with him to some of the exchanges—some of the New York offices of the distributors? A. I did.

Q. Now, when did your meetings in New York take place—that is what time period?

A. Around the 25th or 26th of April, 1950.

Q. Did you visit with anyone at the defendant Universal? A. Yes, we did.

Q. And where did that visit take place?

A. In the attorney's office.

(Testimony of Alex Schreiber.)

Q. Do you remember what his name was? [1465]

A. I think Mr. Landau. I usually get Mr. Landau and Mr. Levinson mixed up.

Q. Mr. Landau and Mr. Simon were present and you were present, is that right?

A. That is right.

Q. Now, Mr. Simon—we have already read to the jury the testimony of Mr. Simon concerning his recollection of what he said and what Mr. Landau said.

Would you tell us what you remember your having said to Mr. Landau, what statements you made and what Mr. Landau said with respect to Universal?

A. Well, can I start out by saying that Mr. Simon did most of the talking.

Q. All right. He was an attorney.

A. Yes. He did most of the talking and explained the reason why he thought we were entitled to the first run Universal pictures; that they were running their pictures in this five-unit theatre combination and he saw no reason why the Paradise shouldn't have an opportunity to run first run pictures, too, because they had their pictures playing in five locations all over the greater Los Angeles area.

I added to that by showing pictures of the area of Westchester. I believe I told him about the number of homes—that I was given the number and the number of people by Mr. Hayden Worthington of the Ayers people. [1466]

(Testimony of Alex Schreiber.)

I believe I showed him the pictures of the proposed theatre and told him about when we were going to open; that I thought that if they could serve their pictures to the Fox Theatre, the Loyola one time or another that, why don't they serve us the pictures first run.

We have got as big a theatre and we expected to have as nice a theatre. We have all the facilities. We have parking, and I believe they—I believe I told them all about the fine things we planned to put in the theatre.

I made a request for first run Los Angeles non-exclusive first run pictures except with clearance over the Loyola Theatre, and both Mr. Simon and I told him we didn't care who else played the pictures with us day and date,—that the Westchester was an area by itself and they had over 30,000 people at that time. That was the figures that were given to me by Mr. Hayden Worthington of the Ayers' office.

I told him about the development in the area, all about the factories, all about the people that lived around there, and that I thought we should have the opportunity, at least, to play their pictures first run.

Q. All right. Do you recall that we had Mr. Simon's testimony about what was said. As far as he and Mr. Landau were concerned, you have nothing to add to that, is that correct?

A. That is about right. Mr. Simon told him the same [1467] thing that practically—rather, I told

(Testimony of Alex Schreiber.)

him practically the same thing Simon did and I added a few other things that Mr. Simon may have forgot.

Q. We have already read to the jury, and I will not trouble them again with the letters from Exhibits 14-F and 14-G, 14-H and 14-I, which are all in evidence and in which Universal stated their position with respect to first run and with respect to 7 days.

The net result so far as their statement to you of 7 days was what?

Mr. Mitchell: That calls for a conclusion as to what the net result was. I don't mind him saying what was said.

The Court: Objection sustained.

Mr. Corinblit: All right. I thought I would save time by asking that question.

The Witness: I forgot to add that Mr.—

Mr. Mitchell: There is no question pending.

The Court: Just a minute.

Q. (By Mr. Corinblit): Mr. Schreiber, was there something else said there that you have not stated?

A. Yes. Mr. Landau said that they studied the area and they came to the conclusion that we were in substantial competition with Inglewood and we would have to bid against pictures there. They decided in order for us to get pictures we would have to bid on the 7-day availability against the [1468] Inglewood theatres.

Also Mr. Simon, I think, mentioned something to

(Testimony of Alex Schreiber.)

them about the Chicago situation where they got more runs and why don't they—why don't they put in pictures for experiment and see whether they interfere with the first run houses, and let us run some pictures—that is the least they could do, is try it and see whether we hurt the other theatres, and to see what the film rental they would get out of the Paradise by playing first run.

Q. Now, on that New York visit you and Mr. Simon also visited with representatives of Loew's Incorporated, isn't that right?

A. That is right.

Q. And do you remember approximately when that conversation took place?

A. That same day or the day before or the day after. We were there about two or three days.

Q. That was about April 25th, you say, 1950?

A. That is right.

Q. And the people that you talked to so far as Loew's was concerned, were whom?

A. Mr. Eisenberg and Mr. Ben—I think his first name is Ben Melniker of the legal department of Metro-Goldwyn-Mayer.

Q. Now, Mr. Simon testified to the conversations that [1469] took place there and I don't think we have to go into them again.

Will you tell me what you remember you said and what the gentlemen there said?

A. Well, Mr. Simon and Mr. Melniker and Mr. Eisenberg were doing all of the talking in the beginning, and Mr. Simon was pointing out about the

(Testimony of Alex Schreiber.)

experience that Metro had in Chicago, where Mr. Simon represented quite a few theatres, and they were trying to compare Los Angeles to Chicago as far as film rentals were concerned, because it was pointed out to Metro the advantage that they got out of the change from running in Chicago and he thought the same thing might apply in Los Angeles by the multiple first runs, et cetera, and then I, after listening, I showed some pictures of the Paradise and explained to them the area and the fine appointments that I expected to put in the Paradise and I also told them the same thing, that the Loyola Theatre, a Fox theatre, had run Metro pictures first run Los Angeles on a multiple first run and why couldn't the Paradise have some Metro pictures.

I believe they told me that they—they said they were only small pictures and they don't serve them any more. I said, "Well, then, serve us some small pictures. We would like to have some small first run pictures. Anything. We would like to have first run and the same privilege you afforded [1470] the Fox Loyola Theatre and that appeared to be the conversation that I had with them at that time.

Q. All right. Now, at the——

A. May I add again, which I forgot, like I did the other?

Q. All right.

A. They said they studied the area, made a survey. Mr. Isenberg was a lawyer. He drove around, I believe he said, with Mr. Gardner, and they looked

(Testimony of Alex Schreiber.)

over all the area, and they decided that we were in competition with Inglewood and we would have to bid against Inglewood.

And that they had one 7 day availability there, and if we wanted that 7 day, we would have to bid, and they would be glad to give us an opportunity to bid on the 7 day, but no first runs, because their first runs were played at the Loew's State downtown and the Grauman's Egyptian in Hollywood.

Q. All right. Now, you had a meeting also with Mr. Simon at the Paramount exchange, isn't that right?

A. That's right.

Q. The Paramount office in New York?

A. That's right.

Q. Who was present at that meeting?

A. First I believe we met with Mr. Austin Keogh, and he called in later Mr. Lou Phillips. Both men were from the legal department.

And Mr. Simon told them why he thought we should have first run Los Angeles non-exclusive.

Mr. Keogh and Mr. Phillips or either one of them told Mr. Simon and I that they had a franchise with the two Paramount theatres and that with that franchise they would not serve us any first run pictures, they just wouldn't do it, until the courts decided what position they were in or how the lawsuit was going to wind up.

Mr. Simon, Mr. Seymour Simon or I told them that we understood that the franchise that they had was illegal, but Mr. Simon, as I said before, was doing most all of the talking.

(Testimony of Alex Schreiber.)

I showed the pictures that I had, the airplane pictures. I showed Mr. Lou Phillips and Mr. Keogh the map of the theatres that the members of the jury looked at the other day.

He wanted to see—he wanted to know if I would leave that copy with him.

And I told him that was the only one I had, that I would be glad to have some photostatic copies of it, and Mr. Phillips said, “Okay. We will have some copies made of it.”

So I said, “All right, here it is. Make them.”

I remember distinctly he said, “No, we won’t make the copies. You make the copies.”

I remember distinctly Mr. Simon said, “What is the technicality as to who is to make the copies?”

“They would rather have the copies made by you rather than by them.”

So he called in the secretary and the secretary sent [1473] out and had photographs made of all the theatre locations that I had with me at the time.

Then we talked about pictures and I told Mr. Phillips and Mr. Keogh, “Why can’t we have first run pictures? The Loyola, the Fox house, had Paramount first run pictures. They ran three or four Paramount pictures in the Loyola Theatre first run day and date with Hollywood and downtown, and why can’t we have them?”

Well, they said it was just a coincidence, they were blocked up with pictures, and they gave them those pictures rather than waiting for a late date

(Testimony of Alex Schreiber.)

from the two Paramount theatres, they released those pictures, and that was a long time ago.

I think I told them, called their attention to Captain China or China Captain, a picture that had just recently played the two Paramount theatres.

Well, that was just a coincidence and they don't know, but we couldn't have them, we just couldn't have them.

But they had decided that we could have 7 day bidding, that Mr. Taylor or Mr. Smith or they had decided in New York that they are going to put out two 7 day pictures and two 14 day pictures and we could bid against them, and if I saw Mr. Taylor and Mr. Smith in the Los Angeles office, they will give us the forms or they will give us an opportunity to bid on the pictures. [1474]

Now, I was asked to leave the room after we visited there about a half hour or 45 minutes, because Mr. Simon, I believe, asked me to leave the room because he had some other business with Mr. Phillips and Mr. Keogh that he wanted to discuss on some other theatres, and I left the room.

Q. Mr. Schreiber, I will ask you this question. While you were present in that room, between Mr. Simon and the other people there, was anything said by anyone about bidding between the La Tijera and the Paradise Theatre?

A. Yes. They may have said I had to bid against the La Tijera and Inglewood theatres. I believe they said, also, about that leap frog clearance.

Q. Now, while you were in New York, Mr.

(Testimony of Alex Schreiber.)

Schreiber, with respect to Paramount, we have already had Mr. Simon's testimony with respect to those matters there, and I don't think you have to go any further with it.

While you were in New York you visited at the Warners office with Mr. Simon, isn't that correct?

A. That is correct.

Q. Was that about the same time?

A. That was right a day before or the same day or the next day.

Q. Do you remember who was present? You, Mr. Simon, and who else?

A. Mr. Levinson, the attorney for Warner Bros.

Q. We have had what Mr. Simon states took place. Will you tell us what you said and as best you can recall what Mr. Levinson said to you?

A. After Mr. Simon got through talking to Mr. Levinson and asking for a first run availability, non-exclusive first run, with the three Warner theatres, which Mr. Levinson refused to give or permit, and, of course, said that they studied the area, that he checked with Mr. Herbel and Mr. Greenberg, and they have decided that no first run, but we could have 7 day bidding against the La Tijera and the theatres in Inglewood.

I then showed him the airplane pictures I had, the map that I had of the location of the various theatres, pictures of the theatre, told him about the appointments, told him about the size, told him about the free parking, that we had everything that the Loyola had to offer, and why can't we get some

(Testimony of Alex Schreiber.)

Warner pictures like the Fox Loyola had? The Fox Loyola played Warners also.

And Mr. Levinson said, well, if they did play, it was a small picture, it was a secondary picture—just passed it off that it was nothing.

I said, "Why can't we have that same small picture?" Just as he passed it off. "Why can't we have the same opportunity as the Fox theatre had? We are just two or three blocks away." [1476]

I tried to explain, did everything I could to impress these people that they had been serving the Fox Loyola Theatre at one time or another, although they kept saying it was a long time ago, long time ago, and they don't do it anymore.

I said, "Well, give us one picture, give us two pictures, we want to get started. We have got a beautiful theatre, big investment, big obligation, payment for the equipment, I had a big mortgage payment, loaned a lot of money.

Whether I said that exactly to him or the other ones, but that was my story that I was trying to convey to these people in New York.

Q. Are you certain, Mr. Schreiber, with respect to the Warner's matter, whether at that time you recall stating Warner pictures had played in the Loyola, or was this with regard to some other distributor? This was in 1950.

A. I am pretty sure I told him that they had played pictures there. If I had my records with me of the pictures, I called it to their attention. If they

(Testimony of Alex Schreiber.)

didn't play there, then I told them that the other distributors did, most all, and why can Fox get other pictures besides Fox, and I can't get them? But I am almost positive that they had played at that time as of April 1950. I feel that they had played one picture or two pictures. [1477]

Q. You also made——

The Court: Mr. Corinblit, before you get into another office, we will take our recess.

Mr. Corinblit: Thank you, your Honor.

The Court: Ladies and gentlemen of the jury, we are about to take another recess. Again it is my duty to admonish you you are not to discuss this case among yourselves, you are not to allow anyone to discuss it with you, you are not to formulate or express any opinion as to the rights of the parties until this case has been finally submitted to you.

With that admonition, we will now recess until 15 minutes after 3:00.

(Recess.)

The Court: Stipulate the jury is present in the box?

Mr. Corinblit: So stipulated.

The Court: You may proceed.

Q. (By Mr. Corinblit): Mr. Schreiber, in order to move along here, Mr. Simon already testified you had meetings at RKO, Columbia—I don't believe he testified any meetings were held with United Artists or with Twentieth Century-Fox.

With regard to RKO and Columbia, is your rec-

(Testimony of Alex Schreiber.)

ollection of what was said in accord with what Mr. Simon testified to as read in his deposition?

A. That's right. [1478]

Q. All right. Now, to turn for a minute to the testimony you gave with respect to Universal, on the matter of 7 day availability, the evidence shows that as of an early date you were told you would be required, as early as April or May, you would be required to bid for 7 day availability against all the theatres in Inglewood.

When you got that information, when that information was passed on to you by a representative of Universal, were you informed that Universal, instead of bidding, had been negotiating with either Fox or the La Tijera Theatre for 7 day availability?

Mr. Mitchell: Your Honor, I object to that on the ground there is no foundation laid to show who informed him, and if some person informed him, it is hearsay.

The Court: This is preliminary. He can answer that yes or no. If he answers yes, then he can lay a foundation.

Mr. Corinblit: All right.

Q. Were you informed Universal had been negotiating with Fox or with the La Tijera for the 7 day availability pictures in the Inglewood-Westchester area from about September to at least March?

Mr. Mitchell: I object to that, also, on the ground it is leading, your Honor. You see, for him to

(Testimony of Alex Schreiber.)

answer that question yes, when he asks if he was informed, then he [1479] doesn't need to go any further, if he wants to stop there. The evidence is in. So it is really not a proper question in its present form.

The Court: Change your question and don't make it a leading question.

Q. (By Mr. Corinblit): Mr. Schreiber, what were you informed, if anything?

Mr. Mitchell: Well, now, I object to that on the same grounds.

The Court: May I ask a question? Did you have any conversations with anybody relative to this particular problem?

The Witness: Yes. They told me——

Mr. Mitchell: Wait a minute.

The Court: No. The answer is yes?

The Witness: Yes.

The Court: Now lay your foundation of where the conversation took place, who was there, and what was said.

Q. (By Mr. Corinblit): Before we do that, I will show you Plaintiff's Exhibit 14-F, Mr. Schreiber, which is a letter in evidence from Mr. Landau to Mr. Simon, Mr. Seymour Simon, and ask you to examine that.

A. Yes, I remember that. [1480]

Q. All right. Now, I want to ask you whether prior to this letter on May 4th anyone from Universal had any conversation with you about nego-

(Testimony of Alex Schreiber.)

tiating with the Fox or Universal people about the 7-day availability. A. Yes.

Q. When was there such a conversation?

A. They told me that I have to bid——

Mr. Mitchell: Wait a minute.

The Court: The question was when.

The Witness: Before we opened the theatre and prior to opening the theatre and after we opened the theatre.

Q. (By Mr. Corinblit): Well, I am now referring to this letter, Exhibit 14-F which is dated May 4, 1950. You testified to a meeting with Mr. Marriott at approximately April 12, 1950, about 22 days, three weeks before that. I want to know what conversation you are referring to about this matter of negotiating with Fox and the La Tijera.

Mr. Mitchell: What conversation are you talking about? Can't we get when, where and who were present because you are now asking him for a conversation. Can't we get the foundation?

Mr. Corinblit: Yes.

Q. (By Mr. Corinblit): Was there such a conversation, Mr. Schreiber?

A. Yes. We talked about the 7-day—— [1481]

Q. Just tell me yes or no. A. Yes.

Q. When? A. In about April 1950.

Q. You are talking about the meeting with Mr. Marriott? A. That is right.

Q. Now, what was said there, if anything——

The Court: We were present?

Q. (By Mr. Corinblit): Who were present?

(Testimony of Alex Schreiber.)

A. Mr. Marriott, myself and my son.

Q. That is the——

A. April or March meeting, 1950.

Q. That is the conversation you already testified about? A. That is right.

Q. All right. Now, what was said, if anything, then about the matter of negotiating with the Fox or the La Tijera people?

A. They told me that the Fox and the La Tijera people were bidding for 7-day and if I wanted the pictures we would have to bid against the La Tijera and the theatres in Inglewood.

Q. So nothing was said at that meeting about negotiations? A. No. [1482]

Q. Now, referring to the statement, the conversation you testified that you had with Mr. Hickey at about the same time, in which you stated that Mr. Hickey stated the 7-day availability so far as Paradise was concerned you would have to bid?

A. That is right.

Q. At that conversation was anything said about Loew's negotiating—I will withdraw that.

Was anything said about the matter of negotiating for 7-day availability? A. No.

Q. When you were discussing the matter with Mr. Herbel at about March 30, 1950, when you testified Mr. Herbel said you would—well, I will withdraw that.

Did Mr. Herbel at that time say anything to you about the matter of negotiating the 7-day availability?

(Testimony of Alex Schreiber.)

Mr. Mitchell: I object.

The Witness: No.

Mr. Mitchell: I object to it on the ground it has already been asked and answered and these are argumentative questions.

The Court: It seems to me we are going back over testimony that has already been introduced.

This case is going to take long enough without repeating the testimony. [1483]

Mr. Corinblit: Yes.

The Court: I know it is important before the jury to repeat the questions and answers as many times as possible——

Mr. Corinblit: There is no intent to repeat the question, your Honor. The statement was made to Mr. Schreiber that he would have to bid. I just want it clear that no statement was made that he could negotiate for the pictures on the 7-day availability in the light of the testimony with reference to negotiations right up to the very time that the Paradise went in there and asked for 7-day pictures.

The Court: I will give you plenty of time to argue the case to the jury when the time comes.

Mr. Mitchell: If I recall correctly the witness corrected his testimony about Warner's and said nothing was said about 7 days at this meeting and he is now trying to change it back again. I think it is argumentative and——

The Court: I sustained the objection.

Mr. Corinblit: Very well.

(Testimony of Alex Schreiber.)

The Court: I would like to ask this witness a question.

During this period, 1949 and 1951, did you consider the Paradise Theatre in substantial competition with any theatre?

The Witness: Yes, sir.

The Court: What theatre?

The Witness: Loyola Theatre only.

The Court: It was your opinion there was no substantial [1484] competition between the Paradise Theatre and the other theatres that have been mentioned in this case?

The Witness: That is correct.

The Court: Now, I take it from what you said in regard to the conversations you had with representatives of the other motion picture distributors, that they all took the position that the Paradise Theatre was in substantial competition with the theatres in Inglewood?

A. That is what they all ganged up on me and said.

The Court: I didn't ask you if they all ganged up on you. That may go out as a conclusion. But I take it they all told you in their opinion that there was substantial competition between the Paradise Theatre and the theatres in Inglewood?

The Witness: That is right with the exception of one exchange in the beginning. The United Artists said we could have—Mr. O'Laughlin said we could have 7 days by negotiation the first time I met him,

(Testimony of Alex Schreiber.)

but then for a full year they never let us negotiate for 7 days.

The Court: All right. Now, you say it is your opinion that the Paradise Theatre was not in substantial competition with the theatres in Inglewood?

The Witness: That is correct.

The Court: Now, will you define for the jury what you mean by "substantial competition"?

The Witness: I will be glad to give you my interpretation of substantial competition.

The Court: That is all we want.

The Witness: Substantial competition is where there are two theatres that expect or make an effort to draw their patronage from the same area by playing the pictures day and date.

The two theatres, in permitting the second theatre that may be a new theatre, that just came into the area, or an older theatre that had been there and decided to move up their availability or requested to move up their availability to the same availability of the first theatre, then by the distributors selling them that picture or those pictures day and date with the first theatre there in that area and they are both going to draw from the same area, if by doing that this theatre affects the gross receipts of the first theatre that had the 7-day or the first run or whatever availability it is, even if it is a 21-day house or 14-day house, if it affects it to the extent of at least or a minimum of 25 to 30 per cent cut in their receipts that I would consider substantial competition.

(Testimony of Alex Schreiber.)

The Court: All right. Now what surveys did you make to determine whether or not there was substantial competition or there was not substantial competition between the Paradise Theatre and the theatres in Inglewood. Did you make any [1486] surveys?

A. We made some surveys and then again I used my 32 years of experience in the theatre business to form my opinion.

The Court: Then it was just speculation or a guess or a conjecture?

The Witness: No, it was 30 some-odd years of experience in the business of running all types of theatres, all types of neighborhoods, in seeing the houses, the amount of houses in our area by going up and down the side streets and around to the schools, the business section, checking the population with the Ayers people in the beginning and there were over 30,000 people. There was enough to assure a second theatre in the Westchester area a very handsome profit if they could run day and date with these other theatres. [1487]

The Court: Well, can you tell me how many people from the Westchester area would go into Inglewood to see the pictures in the theatres in Inglewood?

The Witness: Your Honor, I never counted them. There was no way of checking. But I would say very few people would leave the area of Westchester, leave a theatre like the Loyola Theatre or a theatre like the Paradise, to go into Inglewood to

(Testimony of Alex Schreiber.)

see a picture if the picture was playing in the Loyola or the Paradise theatre.

The Court: Then do you base your definition of substantial competition on distance, on mileage?

The Witness: On population in the area that you draw from, the number of people, the number of children, the amount of businesses in that area—not a factory area, because nobody lives in a factory area. That is just factories. But where there are residential sections, where there are thousands of homes as there were in the Westchester area, those are the people from that area that would come to the Loyola and would come to the Paradise Theatre, if both theatres ran the pictures from all the distributors.

There was no sense in making the people of Westchester go to Inglewood or Hollywood or Culver City or Santa Monica or Redondo Beach or Manhattan Beach. We had parking facilities——

The Court: Now, just a minute. I asked you a [1488] question. I didn't want you to make a speech.

The Witness: I'm sorry.

The Court: Let's repeat the question. Does distance have anything to do with this question of substantial competition?

The Witness: Not all the time.

The Court: All right. Did you make any survey to see how many people would come from Inglewood down to the Paradise Theatre?

The Witness: No, because there would be no need for the people in Inglewood to come to West-

(Testimony of Alex Schreiber.)

chester, because they had four or five theatres there. They had their parking there. They were playing all the pictures.

However, if the Loyola and the Paradise played first run pictures, all the pictures, there may be a few people each night that may come from Inglewood into Westchester if they wanted to see a picture earlier, but that would be very few.

The Court: You have no surveys and you have nothing definite to indicate how many people would leave Westchester to go to Inglewood or would leave Inglewood to go to Westchester?

The Witness: I would say very few, but I have made no survey of how many or counted how many people, but it would be very few that would go from one area to the other.

The Court: You have no better criterion to determine [1489] what was substantial competition than the distributors have?

The Witness: Except, your Honor, if you want to put it that way, we had a theatre there that was going to cost over \$450,000, and we couldn't afford to guess. We had to be pretty sure of what we wanted in order to protect that investment.

The Court: The distributors say that the theatres in Westchester were in substantial competition with Inglewood.

The Witness: They all——

The Court: You say they were not.

The Witness: Yes.

(Testimony of Alex Schreiber.)

The Court: I am trying to find out from both of you on what do you base that conclusion.

The Witness: I believe one of the facts is that Fox West Coast Theatres insisted on it, and with their buying power, there was no question in my mind or anybody in the theatre business that Fox West Coast didn't put the pressure on these distributors——

The Court: Well, again I am not asking you to make a speech.

Mr. Johnston: Your Honor, I move to strike the comment of the witness.

The Court: It may go out.

I was trying to find out what yardstick you were using. As I told the jury, I think every one of you fellows have a different yardstick. [1490]

The Witness: I heard you say that.

The Court: As to what you mean by substantial competition.

The Witness: I heard you say that, and when you see, when we have a picture of all the houses, all the people living in Westchester, there is enough people in business in Westchester to support the Loyola Theatre and make it profitable, and to support the Paradise and make it a profitable theatre.

The Court: Well, that's enough.

Mr. Corinblit, I haven't got any further with this witness than I did with the others.

Mr. Corinblit: Your Honor, we may have some more testimony on this point.

I would like to have marked as Plaintiff's Exhibit

(Testimony of Alex Schreiber.)

for identification a photograph of the Westchester area.

Mr. Westbrook: A portion of the Westchester area?

Mr. Corinblit: A portion of the Westchester area.

The Court: It may be marked for identification only, unless there is no dispute.

Mr. Mitchell: There will be no dispute when we find out what it is, when it was taken, and so on. We are not going to quibble about it.

The Court: It may be marked for identification.

The Clerk: 55 for identification. [1491]

(The exhibit referred to was marked as Plaintiff's Exhibit No. 55 for identification.)

Mr. Corinblit: Perhaps Mr. Schreiber can state the date the picture was taken.

The Witness: It is marked on the back of the photograph by the Spence Airview people that took the picture.

Mr. Corinblit: I don't know that we have it on the back of this.

The Witness: Yes, it is on there.

Mr. Corinblit: It is marked January 7, 1951.

Q. Mr. Schreiber, I think we can do it now, so will you step down from the witness stand and point out some of the matters in connection with this picture. Step over on the side and use the pointer.

A. (Witness leaving stand and going to blackboard.)

(Testimony of Alex Schreiber.)

Q. Would you point out to the jury the location of the Loyola Theatre?

A. The Loyola Theatre is on the corner, on the southeast corner of Sepulveda and Manchester right here.

Q. Now will you point out the location of the Paradise Theatre?

A. The Paradise Theatre is at the corner of Will Rogers and Sepulveda, the southeast corner also, a matter of one block or two blocks from the Loyola Theatre. That means one to there and one to there. It is two, but there is a small [1492] street running between the first block and the second block, running from the parking lot in the rear of this business property to the parking lot on the back of these business places. The Hampshire House Furniture Store is on the corner of this small street, so if you want, you can call it one, two, three blocks.

Q. All right.

A. There is the Paradise and there is the Loyola Theatre.

Q. Just run the pointer along Sepulveda.

A. Sepulveda runs this way, north and south, up through here, and goes up into Culver City.

Q. Then to the—I guess that would be the northeast? A. That is northwest.

Q. Point to the northeast. What is that blank space in there?

A. The cemetery and the golf club.

Q. Would you point out the street, La Tijera Boulevard there?

(Testimony of Alex Schreiber.)

A. La Tijera Boulevard is this long street here or boulevard. It runs from here all the way across and runs on this here out past the photograph.

Q. On the outside of the photograph would be the La Tijera Theatre, is that correct?

A. That is correct. [1493]

Q. Now, in which direction from this map would the Inglewood area be? It is off this picture.

A. That would be out over here.

Mr. Mitchell: You just cut it off at Inglewood, didn't you?

Mr. Corinblit: This is a photograph——

Mr. Mitchell: The photograph is just cut off at Inglewood, isn't that right?

Mr. Corinblit: It is cut off at this portion of Westchester. If you will wait 15 seconds, we will give you a photograph of both areas.

Q. Now, looking to the south, and I guess that is off the map, too, what kind of a business establishment is there, or what is there there that the jury ought to know about? The airport is south, is that right?

A. This is part of the new airport extension. Way down along here, and it goes east. The airport is down in here, right down here.

Q. That is to the south?

A. South and over east from Sepulveda, quite a distance down and over. I think this may be one of the factory buildings here that is near the airport.

Q. To the west of that area, what would we find?

A. All the way out here would be the ocean.

(Testimony of Alex Schreiber.)

Q. The Pacific Ocean? [1494]

A. That's right.

Q. Would you designate just briefly some of the businesses in the—will you point out to the jury, please, the parking facilities made available to the Paradise Theatre in Westchester?

A. This is the corner of the Paradise Theatre and the Paradise Bowling Alley. All this area in here is available for parking for the Paradise Theatre and Bowling Alley.

This is a community parking, and this the parking of the Loyola. In other words, the public can park from Manchester all the way down to East Sepulveda Way. They call this street here that goes up like that and around the East Sepulveda Way, which compares with this street here. It is the shape of a shield. They didn't continue this road down here. They made it look like a shield. All this property in here is community parking. If you want to park at the Hampshire House, they can use this, or if they want to park at the Paradise or park at the Loyola Theatre, or the Thrifty Drug Store, the Whelan Drug Store, the Security First National Bank, the gas station, the Foster Freeze, they have this privilege.

That was set up when the property was bought, that all property goes together with the property, you buy the front and the back. The same thing applies on the west side of Sepulveda. All this is public parking in back of the [1495] businesses.

(Testimony of Alex Schreiber.)

Q. Will you point out the location of the Broadway Department store there, please?

A. This is the Broadway Department Store, formerly also Milliron's.

Q. And some of the other businesses south of the Broadway Store that are on that side of the street; what are they?

A. This large sign here is the Westchester Food Palace. Then you have Gallenkamp's Shoe Store, then Western Auto Supply Store, and this is the Curry's Ice Cream.

That, I think, was a hardware store and a paint store in here, and this is a long block of small stores in here, and this is an auto wash back here.

Q. All right. There was some mention of the Loyola University in that area, Mr. Schreiber. Will you point that out?

A. Right here, and this is Hughes, the Hughes Aircraft over here.

Q. Now you can return to the stand.

(Witness resuming stand.)

Mr. Corinblit: We will offer Plaintiff's Exhibit 55 in evidence, your Honor.

The Court: In evidence.

The Clerk: Exhibit 55. [1496]

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit No. 55.) [1497]

Mr. Corinblit: We have a smaller map and it may be we can get this map blown up before we get much further in the case.

(Testimony of Alex Schreiber.)

Mr. Mitchell: May I see it?

(Document handed to counsel.)

The Court: I suppose all of those little dots I see on the map are houses?

The Witness: You bet your life they are and they average three and a half to four people per house.

The Court: Anything you want to say, say it so the jury can hear you. And you shouldn't volunteer any information at all.

The Witness: All right, your Honor.

Q. (By Mr. Corinblit): Mr. Schreiber, first of all—I will ask the court to mark Plaintiff's exhibit next in order a photograph, an aerial view of the Westchester area taken in 1948.

The Clerk: 56 for identification.

(The exhibit referred to was marked Plaintiff's Exhibit 56, for identification.)

Mr. Corinblit: I think I have shown this to counsel.

It is an aerial view of Westchester taken in January, 1948, and I will offer it as Plaintiff's Exhibit 56 in evidence.

Mr. Mitchell: It is more than the Westchester area. [1498] Your description isn't quite accurate. And I think if you will hold it this way, in order to compare it with the other map, you will see what I am talking about.

You have to turn it sideways, Mr. Corinblit.

Mr. Corinblit: And Sepulveda is this street right here.

(Testimony of Alex Schreiber.)

Mr. Mitchell: This really encompasses, looking at it with the title to the left, the diagonal street is La Tijera and it shows a part at least of Inglewood. Really the Academy Theatre is right over here at the edge of the righthand side of the map.

And I guess it shows the Baldwin Hills or the southerly slope of the Baldwin Hills, anyway.

Mr. Corinblit: All right. Mr. Mitchell is correct. I was reading the description off here. It is broader certainly than the Westchester area.

Mr. Mitchell: It is Westchester and part of Inglewood and part of Los Angeles. Westchester is Los Angeles and so are other portions surrounding it.

Mr. Corinblit: With that amendment to the description, I will offer Plaintiff's Exhibit 56 in evidence.

The Court: It may be received.

(The exhibit heretofore marked Plaintiff's Exhibit No. 56, was received in evidence.)

Mr. Johnston: This is what date?

Mr. Corinblit: January 1948. [1499]

I will pass this to the jury in a moment, but we will see if we can't describe it so the jury when they see it can recognize it.

Q. In order to see the north-south line you have to hold the picture sideways, is that right, Mr. Schreiber? This is Sepulveda, this line here, is that correct?

A. Let me look at it this way first. Yes, this is Sepulveda this way or Sepulveda this way.

(Testimony of Alex Schreiber.)

Q. Sepulveda runs across—if you hold it straight up, Sepulveda runs across horizontally, horizontally across the map, is that right?

A. That is right.

Q. And to the northwest is a vacant—it appears to be a group of houses and then a vacant plot there. Do you know what that was or what it was in January 1948? A. Vacant land.

Q. And then over to the right which would be south—— A. That is right.

Mr. Mitchell: To the right would be east. Why don't you put a north on it and everybody that reads a map reads the north at the top that I ever heard of. Put a north at the top and that is the way it is drawn.

The Witness: You have to look at it sideways then.

Q. (By Mr. Corinblit): All right. We will put an arrow north, holding it in that direction and then it would [1500] be south down here and that is equivalent to the southern portion of the exhibit in evidence, is that correct? A. That is right.

Q. And then over to the right, on the right-hand side, beyond the group of—around the Westchester area are houses that are treated as part of Inglewood, is that right? Right here?

A. That is right.

Q. And then as Mr. Mitchell pointed out the street that runs—— A. Northeast.

Q. Northeast is La Tijera?

A. La Tijera Boulevard.

(Testimony of Alex Schreiber.)

Q. La Tijera Boulevard. And then up at the end of La Tijera Boulevard is something called the edge of Baldwin Hills, is that right?

A. No, I don't think so. That is a cemetery and vacant property up in that area—all that vacant property.

Q. All right. We will have this passed to the jury.

Mr. Mitchell: That isn't the Inglewood Cemetery.

The Witness: Hillside.

Mr. Mitchell: It is Hillside?

The Witness: Yes.

Mr. Corinblit: We will ask that the map be handed to the jury. [1501]

The Court: You may hand it to the jury.

Mr. Corinblit: May I have Exhibit 45-J.

Q. I will show you, Mr. Schreiber, Exhibit 45-J, which is designated as a schedule showing the chronological play-off at the Paradise Theatre, August 23, 1950, to September 18, 1951, and I will ask you if this, to the best of your knowledge, reflects a true and correct statement of the pictures played, distributor, availability, the gross and the rentals?

I might say that Mr. Westbrook has examined this and has indicated that he finds some discrepancies with respect to gross receipts, which we will re-check, but subject to that, to the best of your knowledge, that is a correct play-off in the Paradise Theatre?

A. It is.

Q. Subject to the corrections and the double-

(Testimony of Alex Schreiber.)

checking we will offer Plaintiff's Exhibit 45-J in evidence.

The Court: In evidence.

(The exhibit heretofore marked Plaintiff's Exhibit 45-J, was received in evidence.)

Q. (By Mr. Corinblit): Perhaps we should have this exhibit explained.

Under the column "Date," are indicated dates. What do those dates mean, Mr. Schreiber?

A. Those are the dates that we played these particular [1502] pictures at the Paradise Theatre.

Q. Under the column "Name of Picture"?

A. Is the name of the picture that was played on those dates.

Q. And the name of the distributor?

A. Is the film distributor or the company that distributes that particular picture and they are the only ones that can distribute those pictures.

Q. And under the designation "Availability"?

A. The 7-day, the 21-day and 14-day indicated are the days on which we had the opportunity to play the picture or was licensed to play the picture.

Q. In other words, if under this column it says "7-days," that means that the picture was made available to you on the 7-day availability, is that right?

A. After the last play date of the first run theatre.

Q. In other words, the picture was licensed to a first run theatre in Los Angeles, it ended its exhibition in the first run theatre, and then it became

(Testimony of Alex Schreiber.)

available to the Paradise Theatre for the first time on the availability indicated under the column "Availability"?

A. If it was a 7-day there was a 7-day lapse of time in between and that is what they call clearance, between the first run and the 7-day house, so that during the playing of the picture no theatre can have on their screen the [1503] prevue trailers that are shown in all theatres of their coming attractions, the next coming attraction.

They allow that 7-day clearance or a 14-day or a 21-day clearance so that that theatre that plays the picture will not be advertising the picture while the first run theatre is playing it, so that they shouldn't tell their patrons, literally speaking, "Don't go to the other theatre because we have it coming on Wednesday or Thursday," or whatever date. So, they have that 7-day clearance or 14-day to not permit you to advertise it in your theatre while the first run theatre is playing it.

Q. Now, the 7-day period—if the availability here says 14 days, it means that the picture was not available until 14 days after the first run closing?

A. Correct.

Q. And if the designation is 21 days it means the picture was not available to the Paradise Theatre until 21 days after the first run theatre had closed the picture, is that correct?

A. That is right. But in the meanwhile, Mr. Corinblit, if there was 21 days, there would be other

(Testimony of Alex Schreiber.)

theatres that would play on the 7-day and 14-day ahead of the Paradise Theatre.

Q. I appreciate that. In other words, if there was an availability here of 21 days, it may be there were theatres [1504] in Inglewood, for example, that played the picture on the 7-day or 14-day?

A. Not only Inglewood, but all over greater Los Angeles.

Q. Now, under the column "Gross Receipts," what does the entry opposite, under that column refer to?

A. That is the net receipts that we were able to deposit to our account after the Federal taxes were deducted from the gross receipts.

Q. After the admission tax?

A. Admission tax, which is a Federal tax.

Q. Yes. And under the column "Rentals," what do the entries under that column mean?

A. Those are the film rentals we paid for that particular picture either through negotiation or offers or what they call bidding.

Q. Calling your attention, Mr. Schreiber, to the distributor Loew's and just examining the period from August 23 to the end of December, 1950, did the Paradise obtain any Loew's pictures on the 7-day availability—just on this first sheet, the first three months?

A. To what date, Mr. Corinblit?

Q. August 23 to the end of December.

A. End of December?

Q. Yes. [1505]

(Testimony of Alex Schreiber.)

A. Loew's first run, did you say?

Q. Yes, 7 days. Just to the end of December.

A. Yes, to the end of December, we played 2, 3, 4 and 1 is 5 pictures.

Q. Did you play any of those pictures on a 7-day availability? A. 7-day?

Q. Yes.

A. The first one on November 8 is not indicated.

Q. Other than the one not indicated?

A. The four other pictures are not indicated, what days we played on.

Q. There is no indication in the column?

A. No, there is not.

Q. All right. We will supply that.

Now, with respect to the distributor Twentieth Century-Fox during that period, did you play any picture on a 7-day availability?

A. We played no Fox pictures on a 7-day availability.

Q. With respect to the distributor United Artists did you play any picture on a 7-day availability? A. United Artists you say?

Mr. Mitchell: This is up to the end of December?

Mr. Corinblit: Yes.

Mr. Mitchell: 1950? [1506]

Mr. Corinblit: Yes.

The Witness: There is not a single picture played from United Artists on the 7-day availability.

Q. (By Mr. Corinblit): With respect to the

(Testimony of Alex Schreiber.)

distributor RKO, did you play any pictures of RKO on a 7-day availability?

A. There were no 7-day RKO pictures played.

Q. With respect to the distributor Columbia, did you play any pictures on a 7-day availability?

A. We played one 7-day Columbia picture, 7-day availability and there is an indication here which is marked "7 days for two pictures" that was re-issued, called *Gilda* and *Platinum Blonde*. They must have been about three or four years old. They were re-issued, the pictures were brought back into circulation. [1507]

Q. All right. With respect to the distributor Paramount, did you play any pictures on a 7 day availability?

A. One picture.

Q. With respect to the distributor Warners, you did play how many Warner pictures on a 7 day availability?

A. Three pictures.

Q. With respect to the distributor Universal, how many pictures, if any, did you play on 7 day availability?

A. One picture.

Mr. Mitchell: This is just up to 1950, the end of 1950?

Mr. Corinblit: That is correct. [1508]

* * * * *

Q. (By Mr. Corinblit): Mr. Schreiber, at the conclusion of yesterday's session, the court asked you a question with respect to the relationship of distances to the matter of substantial competition, and you gave an answer that indicated sometimes there was relationship and sometimes there wasn't.

(Testimony of Alex Schreiber.)

Would you state what relationship in your opinion [1512] substantial competition in this Inglewood-Westchester area had to distances? What was the situation?

A. Well, the way the pictures were booked, they necessarily weren't booked according to distances. They all vary. That is what I had in mind yesterday when the court asked me, does mileage take a consideration? I had in mind the question was does five miles, two miles, one mile or 20 miles, is that a pattern? When I said no, not necessarily, by that I was thinking about the different theatres and different mileage, and 1.8 miles apart they played day and date and theatres as far as five miles apart were playing day and date.

Q. All right.

A. They all vary. That is what I had in mind. There was no set pattern as to mileage.

Q. Mr. Schreiber, under your direction and control did you have a mileage run off on some of the theatres in the Inglewood-Westchester area?

A. I did.

Q. First we will start with respect to some of the theatres here. The distance from the Academy, I think this is the stipulated figure, the Academy to the Southside, the stipulated figure, I think, is 3.5 miles.

Mr. Mitchell: Don't we have a stipulation on all that? Why should we have evidence now and get a complete conflict with our stipulation, because maybe he will give [1513] something else?

(Testimony of Alex Schreiber.)

Mr. Corinblit: Mr. Mitchell, if you will consult with Mr. Westbrook, you will find that there is a stipulation suggested and I am perfectly ready and happy and am now ready to stipulate some of the figures, although on some of them there is a difference of opinion between us, so on those there will have to be evidence.

The Court: As far as I know, there has been no stipulation. I have been trying to find out what the mileage was and I can't find that there is a stipulation.

Mr. Westbrook: Your Honor, I can't point to the page in the record where the stipulation is, but I am sure there is a stipulation that that mileage is 3.6 miles.

The Court: That's right, but Mr. Mitchell said that there was a stipulation on all of these theatres.

Mr. Mitchell: I think we have agreed on the mileage on most of them.

The Court: All right.

Mr. Westbrook: There are only two or three of them that are in dispute.

Mr. Corinblit: I tell you what we can do. As we come to the mileages, if you will read them off from your record, if we can stipulate to them, we will do it here and now, or if we can't, we will have the testimony.

Q. Now, with respect to the distance between the [1514] Academy and the Paradise, we have that as 4.5 miles, is that correct?

Mr. Westbrook: That is correct.

(Testimony of Alex Schreiber.)

Mr. Corinblit: All right. I will stop here.

Q. Referring to the distributor Universal, Mr. Schreiber, did you observe during the period that you operated the theatre from August, 1950 to September, 1951, that the distributor Universal when it licensed the Academy a 7 day run also licensed the Southside day and date a 7 day run?

Mr. Mitchell: Well, now, that is a leading question. I object on that ground. It is not in accordance with the evidence. It is true sometimes Universal licensed the Academy day and date, and sometimes it didn't, so by asking that leading question, the witness will follow along with him and he will get an answer "Yes," and then we will have something completely in conflict with the record facts.

Mr. Corinblit: Your Honor, on this point there is no reason for this objection. Mr. Mitchell put in an exhibit, Universal G-1, which states that this fact is true. There is just no reason for his objection upon it because the matter is in the record, put in there by Mr. Mitchell.

Mr. Mitchell: My recollection is that sometimes they played day and date and sometimes they didn't.

Mr. Corinblit: That's all the question is.

Mr. Mitchell: Read the question. It isn't that. It is an all-inclusive question. That is what I am objecting to.

The Court: Read the question.

(Question read.)

The Court: Objection sustained. [1516]

(Testimony of Alex Schreiber.)

Q. (By Mr. Corinblit): Did you observe that that occurred at the time during that period?

A. Yes.

Q. Now, what did you observe, if anything, during the period with respect to the distributor Warner Bros. when they licensed the Academy on a 7-day availability?

Mr. Mitchell: Now, I think we ought to have the thing more definite. I mean these general things—we have the record here.

The Court: You do have the record here and the records are certainly better than the observations of this witness.

In addition to that it is purely argumentative and, as I said before, I will give you plenty of time to argue this case to the jury.

When the time comes you may marshall your records and argue it out to the jury.

Mr. Corinblit: This is just a very simple point. I have in mind the question that you asked Mr. Schreiber yesterday. That is the purpose of the question.

Now, I don't think there should be argument about it. It is true we have bulky records that we can put in, the cut-off cards and so forth, which will show the occasions that Warner played the Academy 7 days with the Southside day and date.

Perhaps we can stipulate to that. If we can get a [1517] stipulation that that occurred on occasions that is all I want for this purpose.

Would you stipulate, Mr. Mitchell, the Academy

(Testimony of Alex Schreiber.)

played a picture on 7-day availability and that same picture was played day and date at the Southside? Did that happen?

Mr. Mitchell: Let me check. I can't remember these facts. I will have to check them.

Correct. On occasions the Warner Bros. pictures played day and date at the Academy and the Southside.

But, your Honor, in order that the picture may not be slanted, I think that it should also be stipulated, and I assume that you know this, that Warner also played pictures on occasions day and date between the United Artists and the Southside; the United Artists, the La Tijera and the Imperial and the Southside.

The La Tijera and the Southside.

La Tijera and the Fifth Avenue.

The Paradise and the Imperial.

The Paradise and the Rio and the Paradise and the Southside and the La Tijera and the Imperial.

Mr. Corinblit: Yes, I will stipulate to that fact.

Q. (By Mr. Corinblit): Now, Mr. Schreiber, while we have these stipulations on the record we would like to put the distances on here now and to the extent you can stipulate to them we can do that. [1518]

Now, what distance, counsel, do you state to be the distance between the Southside and the United Artists Theatre?

Mr. Westbrook: According to my figures, approximately 5.3 miles.

(Testimony of Alex Schreiber.)

Q. (By Mr. Corinblit): Will you examine the check list you caused to be prepared, Mr. Schreiber?

Mr. Mitchell: I don't want the testimony of this witness. I don't think we should have the testimony of Mr. Schreiber. He didn't do the driving and if we are going to have a disagreement—if it is a driving test and if we are going to have a disagreement on it we should have the man here who did the driving and not Mr. Schreiber. It is just hearsay.

The Court: If they used an automobile speedometer we all know that automobile speedometers are not accurate—they are approximate only.

Mr. Mitchell: I don't believe he did it himself. My point is he asked if it was done under his direction.

The Court: The only question is, does he agree with this 5.3 figure. He said yes and the argument is over with.

Mr. Mitchell: Right.

Mr. Corinblit: May we have that distance again, please—United Artists Theatre to the Southside Theatre?

Mr. Westbrook: I stated 5.3 miles.

Mr. Corinblit: Well, let us pass that one. It is a little hard for me to arrive at that in a hurry. That is [1519] going to be required to be derived and we will come back to it.

Now, the distance from the United Artists Theatre to the La Tijera—what distance do you state, counsel?

(Testimony of Alex Schreiber.)

Mr. Westbrook: 1.5.

Mr. Corinblit: I recall that figure and we will agree on that.

United Artists to the La Tijera and from the La Tijera to the Imperial.

Mr. Westbrook: La Tijera to the Imperial 5.1, according to my figures.

Mr. Corinblit: That is agreeable, 5.1. And from the Imperial to the Southside?

Mr. Westbrook: Imperial to the Southside would be approximately 1.7.

Mr. Corinblit: Our figures are 1.2. You say 1.7. We can work that out later.

Mr. Westbrook: It can't be 1.2. It is almost 2 miles. You can see it on the map.

Mr. Corinblit: All right, 1.2—1.7.

Now, the La Tijera to the Southside Theatre.

Mr. Westbrook: 6.8, according to my figures.

Mr. Corinblit: All right, 6.8. The La Tijera to the——

Mr. Westbrook: 3.6. [1520]

The Witness: La Tijera to Fifth Avenue, is that it?

Mr. Corinblit: Yes.

The Witness: That is only about a mile and three-tenths.

Mr. Mitchell: May that be stricken on the ground the witness isn't being inquired of?

The Court: It may go out.

Mr. Corinblit: We will leave the question of

(Testimony of Alex Schreiber.)

how far it is. Mr. Schreiber is certainly more familiar with the facts.

Mr. Westbrook: It may be 3.3, in that vicinity. I may have made a quick error in my calculation here.

Mr. Corinblit: All right. We will leave that question open.

The Paradise to the Imperial?

Mr. Westbrook: The Paradise to the Imperial, according to my figures, is 5.2. I believe your figure is 5.6. That is one we can't agree on the route on.

Mr. Corinblit: We will take 5.2 to 5.6.

The Paradise to the Rio?

Mr. Westbrook: Again we have a disagreement. Your figure is 6.8 and mine is 6.1.

Mr. Corinblit: All right. 6.1 to 6.8.

Paradise to the Southside? [1521]

Mr. Westbrook: My figure there is 6.9.

Mr. Corinblit: Our figure is 7.8.

Mr. Westbrook: That's right.

Mr. Mitchell: That's quite a difference.

Mr. Corinblit: Yes, it is.

Mr. Mitchell: How do you miss it by a mile? That is missing it by a mile.

Mr. Westbrook: My suggestion would be that we can scale these off on the map and get them close enough so there can't be any problem. If you want to do it during recess, counsel, I think we can resolve most of these questions.

Mr. Corinblit: All right. Somebody missed it by a mile, Mr. Mitchell.

(Testimony of Alex Schreiber.)

The distance from La Tijera to the Imperial?

Mr. Westbrook: We have that already, haven't we? 5.1.

Mr. Corinblit: Yes.

Mr. Westbrook: It is up on the blackboard.

Mr. Corinblit: 5.1. As I understand, the stipulation is as far as distributor Warner's is concerned, they played pictures day and date in the Academy and Southside, 3.6 miles apart.

Mr. Mitchell: This is just an argument. I made my stipulation and I don't want to have to restate it again, your Honor. [1522]

The Court: If you are not satisfied with your recollection of the stipulation, you can read it in the record tomorrow.

Mr. Corinblit: All right, sir. Prior to asking a question on this point, Mr. Schreiber, plaintiff will offer in evidence Exhibit 18-F, which is Twentieth Century-Fox, Lehman to Eckhardt of Twentieth Century-Fox, April 2, 1951, and Plaintiff's Exhibit 18-G, Eckhardt to Lehman, dated April 10, 1951.

The Court: They may be received in evidence.

The Clerk: Exhibits 18-F and 18-G.

(The exhibits referred to were received in evidence and marked Plaintiff's Exhibits 18-F and 18-G.)

Mr. Corinblit: I would like to read to the jury Exhibit 18-F. This is a letter from Syd Lehman to—

Q. Well, who was Mr. Lehman in April, 1951, Mr. Schreiber?

(Testimony of Alex Schreiber.)

A. Mr. Lehman was one of the officers of Exhibitors Service Company. It is a booking and buying organization for a group of independent theatres. They not only buy and book the pictures, but they also put your newspaper advertising in and they handle it, they pay your film bills for you, they pay advertising bills for you. They usually make a—many a time they made an insurance tie-up. They make give-away tie-ups with theatres. They are a regular service [1523] organization for independent theatres.

Q. When you say they pay film bills for you, you mean that they pay them and you reimburse them, is that right?

A. They bill you first, then you pay them, and then they pay the film companies.

Mr. Corinblit: All right. [1524]

* * * * *

Now, perhaps this is a matter to be stipulated between us. Counsel will you stipulate with us from time to time during the period August, 1950 to September, 1951 Twentieth Century-Fox licensed pictures to the Academy Theatre day and date with the Southside?

Mr. Johnston: I don't know.

Mr. Corinblit: All right.

Mr. Johnston: It is a matter of record, but I don't have the knowledge in my mind.

Mr. Mitchell: It was on a 7 day availability, I assume?

Mr. Corinblit: Yes, that's right.

(Testimony of Alex Schreiber.)

Mr. Johnston: I believe there were some occasions on which that occurred, Mr. Corinblit, but I can't tell you how many or during what period.

Mr. Corinblit: I appreciate that fact. Could we have the stipulation it did occur on occasion?

Mr. Johnston: I believe that is correct, subject to my examination of the records, which I have not done.

Mr. Corinblit: That is between the Academy and the Southside, that distance (indicating).

Q. Now, Mr. Schreiber, other than with respect to this letter from Mr. Eckhardt in April, 1951, did any representative [1526] of Twentieth Century-Fox ever offer to negotiate with you for a 7 day availability day and date with the Academy at your Paradise Theatre?

A. I don't believe we negotiated or received one picture with the Academy Theatre from Fox.

Mr. Corinblit: Now, turning to the distributor Paramount, during this period can we stipulate that there were occasions when the Academy Theatre played Paramount pictures on a 7 day availability day and date with the Southside?

Mr. Mitchell: I will have to look. [1527]

Mr. Corinblit: All right.

Mr. Mitchell: That is correct. There were some occasions but so we have the whole picture, there were also occasions when the Imperial and United Artists played Paramount pictures day and date and the La Tijera and the Imperial did so.

And the Paradise and the Southside did so.

(Testimony of Alex Schreiber.)

And the La Tijera and the Southside did so.

And the United Artists and the Century Drive-In did so.

Paradise and the Century Drive-In did so.

And the Southside and the Century Drive-In did so.

The La Tijera and the Century Drive-In did so.

And the Fifth Avenue and the Southside did so.

The Ritz and the Imperial did so all on a 7-day availability on the two 7-day availability that Paramount made available.

Mr. Corinblit: We will stipulate to those facts.

Q. (By Mr. Corinblit): Mr. Schreiber, turning to the distributor Columbia, did you observe that during this period that from time to time Columbia licensed pictures day and date between the Academy and the Southside? A. Yes.

Q. And did you observe, turning to the distributor United Artists, did you observe that United Artists from time to time licensed pictures between the Academy and the Southside [1528] day and date? A. That is right.

Q. And turning to the distributor RKO, did you observe that from time to time during the period you operated your theatre, the distributor RKO licensed pictures to the Academy day and date with the Southside? A. Yes.

Q. All right. Now, turning for a moment to the La Tijera and Imperial Theatres. Did you observe that during the period from the opening of the Paradise to September, 1951, that the distributor

(Testimony of Alex Schreiber.)

Warner's on occasion licensed pictures between the Imperial and the La Tijera day and date?

Mr. Mitchell: I thought we had a stipulation on that just a moment ago.

Mr. Corinblit: All right, all right. That takes care of Warner's.

Q. (By Mr. Corinblit): With respect to the distributor Universal, did you observe that from time to time they licensed pictures to the La Tijera day and date with the Imperial Theatre?

A. Yes.

Mr. Mitchell: I think we have a stipulation on Universal, Warner's and Paramount and nothing was said about Loew's because they don't sell pictures day and date in that area.

Mr. Corinblit: All right. We covered those three. [1529]

Then the only other one that we will want with respect to the distributor Columbia is, did you observe from time to time that, prior to September, 1951, that Columbia licensed pictures to the La Tijera and Imperial day and date? A. Yes.

Q. With respect to the distributor RKO did you observe from time to time that RKO licensed pictures to the La Tijera and Imperial Theatres day and date? A. I believe they did also.

Q. And with respect to the distributor United Artists did you observe that from time to time United Artists licensed the Imperial day and date?

A. I think they did.

Q. Mr. Schreiber, I will show you Plaintiff's

(Testimony of Alex Schreiber.)

Exhibit 1-Q, which is an offer form or request to offer form of Paramount, dated June 28, 1950.

(Handing document to Mr. Mitchell.)

Mr. Mitchell: I understand that this is simply an enclosure accompanying a letter with reference to two 7-day runs that were offered.

If you are going to use this document I think we should have the entire document.

Mr. Corinblit: All right, I will get to that other matter but if you will take a look at Exhibit 1-S.

(Handing document to Mr. Mitchell.) [1530]

Mr. Mitchell: You will agree that Paramount offered two 7-day runs.

Mr. Corinblit: Counsel, I think that is correct as of this time.

Mr. Mitchell: All right.

Mr. Corinblit: And the document will go into evidence if you will let me do it in my own way.

Mr. Mitchell: I don't want any intimation that Paramount offered only one 7-day run because with that letter there was an explanation that there were two 7-day runs being offered, is that right?

Mr. Corinblit: Not with Exhibit 1-S. There was no explanation at all accompanying that.

Mr. Mitchell: You are talking about 1-Q. There was an explanation with it, wasn't there?

Mr. Corinblit: There was a letter accompanying Exhibit 1-Q. I would like to go to Exhibit 1-S and then we will come back.

Q. (By Mr. Corinblit): Now, Mr. Schreiber, I will show you Exhibit 1-S, which is a request for

(Testimony of Alex Schreiber.)

offer form on the picture *Lawless* on the 7-day availability, and ask you whether or not—that letter is dated July 11, 1950, and I will ask you whether or not that document was received by you or your organization—Mr. Marco Wolff who at that time—it is addressed to you—and I will ask you if that was received [1531] by you from Paramount.

A. Well, it was either received by me or received by Marco Wolff. I believe it was received by me because they mailed it to me at my home.

Mr. Mitchell: That was before the theatre opened?

Mr. Corinblit: Yes. Now I will offer in evidence Plaintiff's Exhibit 1-S.

The Court: It may be received in evidence.

The Clerk: Plaintiff's Exhibit 1-S in evidence.

(The document referred to was received in evidence and marked Plaintiff's Exhibit No. 1-S.) [1532]

* * * * *

Mr. Corinblit: Now, the form of the letter 1-S with respect to Paramount from July, 1950 on, will you stipulate with me, counsel, that this is the form which Paramount used for requesting bids for two runs?

Mr. Mitchell: Requesting what?

Mr. Corinblit: Requesting bids for two runs.

Mr. Mitchell: Two 7-day runs.

Mr. Corinblit: From July 11 through September, 1951.

(Testimony of Alex Schreiber.)

Mr. Mitchell: June 28, 1950, pursuant to a letter in which Paramount instructed the theatre owners as to how those two 7-day runs would be offered.

Mr. Corinblit: All right. We will move the date back to June 28.

Mr. Mitchell: The other Exhibit Q——

Mr. Corinblit: Beginning with the date you mentioned. That is the stipulation. That was the form of the letter offer.

Mr. Mitchell: Yes, with the letter of September 28 and these forms. That is what went out.

Mr. Corinblit: All right. Now, I don't think we need foundation for this so I will offer in evidence Plaintiff's [1533] Exhibit 1-P-1. That is the letter up to June 28, 1950.

The Court: It may be received in evidence.

Mr. Mitchell: That was accompanied with the request for bids for the picture *My Friend Irma Goes West*, which is 1-Q.

Mr. Corinblit: Yes.

The Clerk: 1-P-1 in evidence.

(The document referred to was received in evidence and marked Plaintiff's Exhibit No. 1-P-1.)

Mr. Mitchell: I think Exhibit 1-Q should be introduced with it because that is what went out to Mr. Schreiber, the letter and Exhibit 1-Q.

Mr. Corinblit: All right. We offer in evidence, so we won't disturb Mr. Mitchell, Exhibit 1-Q.

The Court: It will be received in evidence.

(The document referred to was received in

(Testimony of Alex Schreiber.)

evidence and marked Plaintiff's Exhibit No. 1-Q.)

Mr. Mitchell: You are not disturbing me but I don't know why we don't go in order. [1534]

* * * * *

Q. (By Mr. Corinblit): Mr. Schreiber, under the Paramount plan, as indicated here, in order to obtain the 7 day availability on a Paramount picture, you were required to bid for Paradise with [1538] the theatres we named, which included the La Tijera, the theatres in Inglewood, including the Academy, the Fifth Avenue, and the Southside Theatre, Rio and Imperial, is that correct?

A. That is correct.

Q. There were two 7 day availabilities offered pursuant to that letter, is that correct?

A. That is correct.

Q. However, if one of the runs was won by the Paradise Theatre, under this letter would Paradise obtain any clearance over the theatres in Inglewood?

A. It is all according——

Mr. Mitchell: This word clearance is loosely used. They had a 7 day run and immediately following a 14 day run. There is no elapse of time under the plan. There is no clearance in that sense of the word. There is a priority of run. There is no elapse of time.

Mr. Corinblit: That is Mr. Mitchell's interpretation. I will change the question to avoid the problem.

Mr. Mitchell: All right.

(Testimony of Alex Schreiber.)

Q. (By Mr. Corinblit): If the Paradise Theatre received one of these runs, would you have the right under this Paramount plan, that the theatres in Inglewood not play the picture until you completed your exhibition, if you know the answer to that?

A. Only if they gave them a second 7 day picture, then [1539] there would be no clearance and we would play it day and date. That is where that imaginary line that they talked about came in. There was supposed to be one print on one side and one print on the other side.

Mr. Mitchell: That statement shows that the witness does not understand the plan and he is therefore giving something under the letter which he does not know anything about, because under this plan there is no imaginary line. I think we should take the letter and argue about the letter.

The Court: You mean the territory was not divided?

Mr. Mitchell: The territory was not divided by an imaginary line. Paramount had several plans. They were experimenting with this difficult area, and long before Mr. Schreiber came around they experimented with an imaginary line which Mr. Pirosh told you about. They found that didn't work out, so on June 28 they adopted the plan they are talking about here where theatres were given priority of run over theatres in their immediate vicinity. It is simple enough to explain if you know it, but I am pretty sure Mr. Schreiber does not under-

(Testimony of Alex Schreiber.)

stand it when he talks about an imaginary line. I know that he cannot understand it when he says that.

The Court: Mr. Schreiber has had experience, 30 years experience in the motion picture industry. He knows what these terms mean. He understands what you are talking [1540] about.

Will you tell me how this jury can understand it? I don't know. It seems to me that the jury is all at sea or would be at sea. Maybe I am not giving credit where credit is due as far as the jury is concerned. Maybe they are smarter than I think they are. I don't know.

Mr. Mitchell: Well, I suggest we take examples of what they did then. What he is being asked is a conclusion. I don't think he is qualified to testify on what the letter means.

The Court: May I ask a question?

Mr. Corinblit: Yes, sir.

The Court: Under this plan, did you get any Paramount pictures on the 7 day availability?

The Witness: I think we got one picture.

The Court: I think you can testify as to how the plan worked as far as that one picture in concerned.

Mr. Mitchell: He got two pictures, so he must know what he did on two pictures.

Mr. Corinblit: All right.

Mr. Westbrook: Sunset Boulevard and Samson and Delilah.

The Witness: What was the second one?

(Testimony of Alex Schreiber.)

Mr. Westbrook: Samson and Delilah.

The Court: In the interpretation of this letter, [1541] we are approaching again the same kind of problem we had when we asked these various witnesses to define substantial competition. Everybody knows what it means but nobody can define it. You all know what this letter means, but you all come to different conclusions.

Mr. Mitchell: This is a written instrument, your Honor. You can instruct the jury what it means. That is a question of law.

The Court: I am not going to tell the jury what it means.

Mr. Mitchell: We will help you. I really think we can agree with Mr. Corinblit on what the letter means.

The Court: You may find out that if the jury ever gets to the letter, if they ever remember the letter, you will have 10 different interpretations of what it means.

Mr. Mitchell: That is why we want you to interpret it.

The Court: No. You asked for the jury, or somebody asked for the jury. I didn't ask for the jury. That is a problem for the jury. I am not having anything to do with that at all. If you come up with 12 different answers, that is just too bad.

Mr. Mitchell: Can we have a moment, your Honor, to talk to Mr. Corinblit?

The Court: Surely. [1542]

(Interruption.)

(Testimony of Alex Schreiber.)

Mr. Corinblit: We have considered, and I will try to make a statement of the matter subject, of course, to the objection of counsel.

Mr. Mitchell: Let's take it theatre by theatre.

Mr. Corinblit: All right.

If under this Paramount plan the Paradise won one of the runs, it had no priority of run over the United Artists Theatre, that is, it had no right to insist to the distributor that the United Artists Theatre not play the picture until we were completed.

Or, the other way around, the United Artists Theatre could play day and date.

Mr. Westbrook: Or the Paradise could play day and date with the United Artists.

Mr. Corinblit: Or the Paradise could play day and date with the United Artists, that is correct.

Mr. Westbrook: Neither had any prior right.

Mr. Corinblit: That is correct. But the Paradise did, if it won one of the runs, have the prior right over the La Tijera.

Mr. Mitchell: In other words, the La Tijera and the Paradise could not play day and date.

Mr. Corinblit: That is one side of the coin.

Mr. Mitchell: That's right. [1543]

Mr. Corinblit: And the La Tijera and the Paradise could not play day and date. The Paradise and United Artists could play day and date, or putting the second point the reverse way, the Paradise, if it won one of the runs, had no right to insist that

(Testimony of Alex Schreiber.)

the United Artists wait until it completed the play-off before they started playing the picture.

Mr. Mitchell: That is true, but it did have a right to insist that the La Tijera wait.

Mr. Corinblit: That is correct.

Mr. Mitchell: And, vice versa, if the La Tijera won the run, it had the right to insist that the Paradise wait.

Mr. Corinblit: That is correct.

Now, if the La Tijera won one of the pictures, it had the right to insist that the Paradise not play the picture until the La Tijera had completed, and also had the right to insist that theatres in Inglewood, including the United Artists and the Fifth Avenue, not to play the picture until they had completed.

Mr. Mitchell: That is not quite accurate, Mr. Corinblit. They had the right to play the picture for 7 days, and then, since Paramount was offering two 14 day runs, if the La Tijera wanted to play the picture for 14 days, instead of 7, he would find himself playing day and date during the last 7 days.

Mr. Corinblit: Well, that's right, but I am talking about the ordinary situation of playing 7 day availability, a week. On that point, my statement was correct?

Mr. Mitchell: That's right.

Mr. Corinblit: All right. Now, to put it conversely so that we will be fair, it was not permissible under this plan for the La Tijera to play day and date with the Academy.

(Testimony of Alex Schreiber.)

That is correct, is it not?

Mr. Mitchell: That's right, and, similarly, if the Academy won the bid, the La Tijera would not be permitted to play day and date.

Mr. Corinblit: Right. But if the Academy won the picture, it could insist that the La Tijera and all the theatres in downtown Inglewood not play the picture until it was completed and could also insist that the Imperial Theatre and the Rio Theatre not play the picture until the Academy had completed its exhibition for the first week.

There may be some slight problem on that if they lap over.

Mr. Mitchell: That's right, but if the Academy won the picture, the Paradise could play day and date.

Mr. Corinblit: The Academy had no right to insist that the Paradise wait, that is correct.

Now, finally, if the Southside won the picture, it [1545] had the right to insist that the Imperial and the Rio not play the picture until the Southside had completed, but it did not have the right to insist that any other theatre wait, or, to put it the other way around, the Southside and the Paradise under the Paramount plan could play day and date. They had to bid against each other, but they could play day and date for the two runs. [1546]

Mr. Mitchell: In other words, the Paradise could play day and date with everybody in the area except the La Tijera?

Mr. Corinblit: Right. And they had to bid

(Testimony of Alex Schreiber.)

against everybody in the area including the South-side.

Mr. Mitchell: That is right.

Mr. Corinblit: And the theatre that received the widest possible protection was the Academy Theatre, isn't that correct?

Mr. Mitchell: I don't believe so at all.

Mr. Corinblit: If you will take the Academy Theatre under this Paramount plan——

Mr. Mitchell: I think the theatre that received the widest possible protection was the Paradise.

Mr. Corinblit: If the Academy won the picture, Mr. Mitchell, the Academy could play—the Academy could insist that no theatre in downtown Inglewood or the La Tijera or the Imperial——

Mr. Westbrook: The theatres in downtown Inglewood are 1.8 miles from the Academy according to my figures, and the others are 1.4 and 1.5, so I don't know what you mean by "the widest area of protection."

Mr. Corinblit: I am just seeking the facts. If the Academy won the picture they could insist that no theatre in downtown Inglewood or the La Tijera, counsel, which is [1547] not in downtown Inglewood, or the Imperial or the Rio not play until the Academy completed its playoff. That was the Paramount plan.

The Court: Well, I don't think I have ever seen a better demonstration of confusing a jury.

I doubt very much if any one of the jury under-

(Testimony of Alex Schreiber.)

stands that plan. I don't understand it and I doubt very much if the jury does.* * * * * [1548]

Q. (By Mr. Corinblit): Mr. Schreiber, under the Paramount Plan the Paradise Theatre was required to bid against the Southside Theatre? There is a dispute as to the distance. We have talked about distances ranging from 6.9 to 7.8 miles between the Paradise Theatre and the Southside Theatre.

The Southside Theatre is located at the corner of Vermont and Imperial and the Paradise is located at Sepulveda between Manchester and Century.

In your opinion were the Paradise and Southside Theatres in substantial competition?

A. No, absolutely no.

Mr. Mitchell: Let me ask you this, Mr. Corinblit. I know not only from what Judge Westover said, but from my study of the plan that it is somewhat confusing, but this much is clear, that if the Academy made the highest bid under the Paramount plan and won the run, then the only two theatres which could play the other run would be either the Southside or the Paradise. Isn't that correct?

Mr. Corinblit: That is right.

Mr. Mitchell: And the Southside and the Paradise, from August until December, 1950, were operated by the same man, Marco Wolff, right?

Mr. Corinblit: For those three months, yes.

Q. Now, under the Paramount plan, Mr. Schreiber, in order to get a 7-day availability you were required to bid against [1549] the Academy Theatre.

(Testimony of Alex Schreiber.)

In your opinion was the Paradise Theatre in substantial competition with the Academy?

A. It was not.

Mr. Mitchell: What did you say?

Mr. Corinblit: I said in order to get a picture on the 7-day availability, the Paradise had to bid against the Academy Theatre just as it had to bid against the Southside.

Mr. Mitchell: That isn't quite an accurate statement of our stipulation, Mr. Corinblit.

If the Academy won one of the runs the Paradise did not have to bid against the Academy. All the Paradise had to do was to have Marco Wolff either bid the most for the Southside or bid the most for the Paradise. That is true, isn't it? Isn't that true?

Mr. Corinblit: If the parties all submitted bids the Academy and the Southside could play day and date; the Academy and the Paradise could play day and date; the Paramount Company could award two runs, one to the Academy, one to the Paradise and one of the Academy and Southside.

Mr. Mitchell: It depends upon which one Marco Wolff put in the highest bid for—whether he put in the highest bid for the Southside or put in the highest bid for the Paradise. That is what the situation was, wasn't it? [1550]

Mr. Corinblit: Well, now, if the Paradise was to obtain a 7-day run under the Paramount plan, Mr. Mitchell, we have got a very simple question.

(Testimony of Alex Schreiber.)

The *Paradise* said, "This is the way you get pictures under this plan and no other way."

The *Paradise* had to bid and it had to bid against theatres and among the other theatres—that is, it had to bid against the *Southside* and among the other theatres that it had to bid against to get a picture in the *Paradise Theatre* was the *Academy*. There is no dispute about that, is there? We couldn't get a 7-day picture unless we put in a bid against the *Southside* for the *Paradise*, unless we put in a bid against the *Southside* and put in a bid against the *Academy*. Is that right?

Mr. Mitchell: They are not bidding against the *Academy* because the *Academy* can't have priority of run over the *Paradise* and the *Paradise* can't have priority of run over the *Academy*, so they are not bidding against the *Academy*.

The Court: Don't you think you have wasted enough time on this?

This witness has testified that he didn't consider any of these theatres in substantial competition except the theatre that was within three blocks of it.

Mr. Corinblit: The *Loyola Theatre*.

The Court: He already testified to that. [1551]

Mr. Corinblit: All right.

Q. I will show you Plaintiff's Exhibit 10-J for identification, which is a bid offer form from Warner Bros. dated September 22, and referring to the 7 day availability on the picture *Three Secrets* and ask you if that bid offer form was received by you or on your behalf from Warners. A. Yes.

(Testimony of Alex Schreiber.)

Mr. Corinblit: All right. We will offer Plaintiff's Exhibit 10-J in evidence.

The Court: It may be received in evidence.

The Clerk: 10-J.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit 10-J.) [1552]

* * * * *

Mr. Corinblit: Now, I wonder if it would be possible for us to stipulate this was the form in which the Warners requests for offers went out.

Mr. Mitchell: That is true, from September 1, 1950, to May 9, 1951, which was the period during which formal competitive bidding was used by Warner Bros.

Mr. Corinblit: All right. We will accept that stipulation.

Q. Then, under the Warners bidding arrangement, Mr. Schreiber, it is a fact, is it not, that in order to obtain a 7 day picture on bid, the Paradise had to bid against the theatres I have named, including the Southside, is that correct?

A. That's right.

Q. I will show you Plaintiff's Exhibit 14-O for identification, Mr. Schreiber, and ask you whether or not this was received by Marco Wolff, Southside Theatres—well, I notice this is for the 14 day availability, but I will ask you if this was received by you or by Mr. Marco Wolff on your behalf.

A. Yes.

Q. All right.

(Testimony of Alex Schreiber.)

A. Mr. Corinblit, I would like to add, you didn't ask me, but if I may——

Mr. Mitchell: I can't hear.

The Witness: I would like to state—I haven't been asked, but I would like to state—— [1554]

Mr. Mitchell: Well, why don't we wait until he is asked.

Mr. Corinblit: All right.

Before I offer this, counsel, I wonder if we can get a stipulation that this is the form in which the 7 day bid went out from Universal.

Mr. Mitchell: I think there is a 7 day Universal request for bid already in evidence, if you want to use that.

Mr. Corinblit: That's all right.

Mr. Mitchell: It is Universal G-2. It is in evidence. Why don't you use that? That is in evidence already. That is the form that Universal used during the time it was engaged in formal competitive bidding.

Mr. Corinblit: The printed portion of Exhibit G-2 is the form that was the form used by Universal, is that right?

Mr. Mitchell: That is correct.

Mr. Corinblit: All right.

Q. Now, under this form, Mr. Schreiber, the theatres against whom you were required to bid are not stated,——

I will ask counsel if he can stipulate with me that the theatres against whom the Paradise was required to bid in order to obtain the 7 day availabil-

(Testimony of Alex Schreiber.)

ity on bid included the theatres in Inglewood, La Tijera, Academy and the Southside.

Mr. Mitchell: That is correct, but you heard the testimony of Mr. Marriott that he would license a second 7 day [1555] availability if the theatre submitting the bid would waive priority of run.

Mr. Corinblit: I heard that, yes.

The Witness: That was on Universal pictures?

Mr. Corinblit: Yes.

Q. I will show you, Mr. Schreiber, Plaintiff's Exhibit 6-T-2, after showing it to counsel.

(Handing document to counsel.)

First, counsel, can we get a stipulation with respect to 6-T-2, that this is the form in which Loew's sent out the bid letters during the period that those bid letters were sent out to the Paradise?

Mr. Mitchell: Yes.

Mr. Corinblit: We will offer Plaintiff's Exhibit 6-T-2 in evidence.

The Court: It may be received in evidence.

The Clerk: 6-T-2.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit 6-T-2.)

Mr. Mitchell: So as to avoid confusion, do you want to say to whom or to what theatres such requests for bids were sent?

Mr. Corinblit: Yes. The theatres that were included in the bidding included the Paradise, the La Tijera, United Artists, Fox, the Fifth Avenue and Academy Theatres, [1556] and I don't know

(Testimony of Alex Schreiber.)

whether the Century Drive-In was included at this time or not. I don't believe it was.

Mr. Mitchell: I don't believe so.

Mr. Corinblit: I don't think it was.

Mr. Mitchell: Those theatres you have named and not the Southside or the Rio or the Imperial. They were not sent requests for offers. They didn't even play, they were not permitted to play 7 day.

Mr. Corinblit: All right.

Mr. Mitchell: This is Loew's.

Mr. Corinblit: This is Loew's.

Q. Now, Mr. Schreiber, with respect to any of the distributors who sent—who required the Paradise to bid in order to obtain the 7-day availability, did each one of these distributors under their plan reserve the right to reject all bids?

A. They did.

Q. All right. Now, Mr. Schreiber, I think yesterday the court asked a question about the matter of there having been surveys made—any surveys made by you and at one of the transcript you said there had been some surveys made and at another place you stated that you did not make the survey—any survey.

Would you state what is the fact concerning the existence of a survey made, not by you, but made under your direction and control in about October or November of 1950?

A. When we opened up in August, August 23rd, and we couldn't get any pictures, any first run pictures or any 7-day—

(Testimony of Alex Schreiber.)

Mr. Mitchell: Now, just a moment.

The Court: That is not responsive to the question at all. It may go out. [1558]

Q. (By Mr. Corinblit): Just answer this question: Was a survey made under your direction and control in about October or November of 1950?

A. Yes.

Q. And that was a survey which you had some people make by going out with cards and ask the householders in the Westchester area as to what theatre they went to as well as other questions, is that right?

A. That is right. [1559]

* * * * *

Mr. Mitchell: I will use a copy of Plaintiff's Exhibit 53 to show the witness, if I may, your Honor.

Mr. Corinblit: Can't we stipulate, counsel, that 53 is in evidence subject to correction. I don't think it went in.

Mr. Mitchell: Didn't that go in? Well, I think the correction has been made on it. I think there was only one picture that was improperly shown on it and I think you have agreed that that was an error.

Mr. Corinblit: Yes. And it is in evidence as Plaintiff's Exhibit 53 subject to correction, is that correct?

Mr. Mitchell: That is correct.

Mr. Westbrook: I don't think it has been offered.

(Testimony of Alex Schreiber.)

The Clerk: It has not been offered. It is still marked for identification.

Mr. Corinblit: Well, we will offer it in evidence.

The Court: What is the number?

Mr. Corinblit: 53.

The Court: It will be received in evidence.

(The exhibit heretofore marked Plaintiff's Exhibit No. 53, was received in evidence.)

Cross Examination

Q. (By Mr. Mitchell): Mr. Schreiber, you have testified that the Loyola played during its existence the pictures of every distributor. Do you know that the Loyola opened on October 3, 1946, or thereabouts? A. Thereabouts, yes.

Q. And we are talking about a period from October 3, 1946, to September 17, 1951, a five-year period. We are going to talk about the pictures of the defendant distributors, at least other than Twentieth Century-Fox.

Twentieth Century-Fox licensed all or most all of its pictures to the Loyola along with the Chinese and the Loew's State and the Uptown, isn't that correct?

A. And you have Fox Wilshire, also.

Q. But I want to talk about the pictures that played the Loyola during this five-year period distributed by Loew's, Paramount, Warner's and Universal. You have the play-off there of the Loyola Theatre.

The only pictures of Loew's during that five-year

(Testimony of Alex Schreiber.)

period that played in the Loyola Theatre were the pictures *Two Smart People* and *Cockeyed Miracle* in 1946, is that right?

A. You are talking now about the five years, including the time the Paradise Theatre was opened?

Q. Up to September 17, 1951. [1561]

A. All right.

Mr. Corinblit: We will stipulate that there were those two pictures only from Loew's.

Mr. Mitchell: All right.

Q. In December, 1946, right?

A. The date is December 11 to the 24th, two weeks.

Q. Will you also stipulate that the only picture of Universal that played in the Loyola during that period was *Woman's Vengeance* in 1948, right?

A. I haven't checked it yet.

Q. I thought maybe your counsel wanted to stipulate.

Mr. Corinblit: We will let him look through it. I think that is correct, but he can check.

Q. (By Mr. Mitchell): Look at September 12, 1948, and you will see it.

A. But I want to go beyond that.

Q. All right. Do it.

A. That's right, with one question I have in mind. *Eagle-Lion*, if I am not mistaken, at one time released some pictures through Universal. Whether it was this period or not, I am not sure.

Q. We are talking about pictures produced and

(Testimony of Alex Schreiber.)

released by Universal. Just one, isn't that right?

A. That is correct.

Q. In the five-year period. [1562]

A. That was for seven days.

Q. Do you remember that picture, Woman's Vengeance? A. No, I do not.

Q. Well, you were running a group of theatres in Detroit at that time. Do you remember that was a B picture?

A. No, I do not remember it was a B picture.

Q. Maybe you didn't even play it in your theatres.

A. I may have played it in all our theatres.

Q. The Loew's pictures Two Smart People and Cockeyed Miracle, do you remember those were B pictures? A. They were not B pictures.

Q. You considered those A pictures?

A. I consider a picture that played two weeks in the Loyola Theatre as a top picture is not a B picture.

Q. Do you remember these pictures?

A. Two Smart People?

Q. Yes.

A. I have a faint recollection. I couldn't tell you who was in it and how many hundred thousand dollars or million dollars it cost to make, no, I can't tell you that, but I can tell you that a picture that played the Loyola Theatre in December, 1946, when they were open and played two weeks was a big picture and it was an A picture. Cockeyed Miracle

(Testimony of Alex Schreiber.)

that played with it might have been a B picture on the second section of the program. [1563]

Q. Your statement as to the quality of the picture is based on a conclusion that you reach from the fact that it played the Loyola Theatre?

A. No. It played the Loyola two weeks plus the other Fox houses, also.

Q. Listen to my question, Mr. Schreiber, and we will get along much faster, if you will listen to me and don't argue.

You base your statement as to the quality of the picture upon the fact that it played the Loyola, right? A. Two weeks.

Q. Two weeks, is that right? A. Yes, sir.

Q. You don't remember the pictures?

A. Offhand, no, I do not.

Q. Now, Paramount during that entire five-year period played two pictures in the Loyola, and just two, Golden Earrings and Captain China. Will you check that? A. I will. [1564]

Mr. Corinblit: We will stipulate to that fact.

Mr. Mitchell: All right. I will accept the stipulation.

Q. (By Mr. Mitchell): Golden Earrings played in 1947 and Captain China in 1950. Do you stipulate to that?

Mr. Corinblit: Yes.

Mr. Westbrook: February, 1950, on Captain China.

Mr. Mitchell: Yes.

Q. (By Mr. Mitchell): Do you remember talk-

(Testimony of Alex Schreiber.)

ing to Mr. Smith and Mr. Taylor about those two pictures? A. I sure do.

Q. And they told you that Golden Earrings was put in the Loyola because there was a booking congestion in the two Fanchon & Marco first run theatres, the Paramount Downtown and the Paramount Hollywood, is that right?

A. Words along that line, yes. He said it was a coincidence.

Q. And they told you Captain China was played in that theatre because Fanchon & Marco wouldn't play it as a top of the bill in the Paramount Downtown and the Paramount Hollywood and so they took it away from them and played it in the Loyola?

A. No, he didn't say that.

Q. You don't remember that?

A. He did say that that was another coincidence and [1565] they were blocked up on their bookings.

Q. All right. Now, during this entire 5-year period Warner Bros. played just two pictures in the La Jolla in 1949, is that right?

Mr. Corinblit: We will stipulate to that fact.

Mr. Mitchell: One was One Last Fling and the other House Across The Street?

Mr. Corinblit: Correct.

The Witness: Have you the dates, Mr. Mitchell? I can find them quicker.

Mr. Mitchell: Both in 1949.

The Witness: Do you have the month?

Mr. Mitchell: I don't have the month.

(Testimony of Alex Schreiber.)

The Witness: I have one here.

Mr. Mitchell: Your counsel has stipulated to it.

The Witness: Okay.

Mr. Mitchell: And we will move along.

The Witness: All right.

Mr. Mitchell: Your Honor, the compilation which, with the assistance of the witness and the stipulations that have just been made, I would like to offer this in evidence.

The Court: It may be received in evidence.

The Clerk: Whose exhibit is this?

Mr. Mitchell: We can call it a joint distributor exhibit. It doesn't make too much difference.

The Clerk: Is that a new one?

Mr. Mitchell: Yes.

The Clerk: Joint Distributors Exhibit R in evidence.

(The document referred to was received in evidence and marked Joint Distributors Exhibit R.)

Q. (By Mr. Mitchell): During the period that your theatre was open from August 23, 1950, to September 17, 1950, Loew's, Warner's, Universal and Paramount did not play any pictures at all in this Loyola Theatre.

Mr. Corinblit: You said until September, 1950, counsel.

Mr. Mitchell: September, 1951, I am sorry.

Mr. Corinblit: We will stipulate to that fact.

Q. (By Mr. Mitchell): Now, in order to play in a theatre such as the Paradise on a first run

(Testimony of Alex Schreiber.)

policy you would have to have approximately 30 pictures a year for the top half of a double bill and 30 pictures a year for the lower half of a double bill or approximately 60 pictures a year, is that right? A. For first run policy?

Q. No, for a 7-day policy or for a first run policy.

A. For first run there is a possibility of 30 to 40 pictures on the top half and 30 to 40 on the bottom half, yes.

Q. You certainly couldn't play the year with only two pictures, could you?

A. No, you could not. [1567]

Q. You have had a long experience in the theatre business, haven't you? A. Over 30 years.

Q. You have operated at one time as many as 24 theatres?

A. That is right, my associates and myself.

Q. That is what you call a theatre chain, isn't it?

A. People would refer to it as a theatre chain or theatre group.

Q. Well, I heard you referred to Fox-West Coast as a chain because they operate a number of theatres. You also operated a number of theatres in the sense of a chain, didn't you?

A. In the sense of a chain of Fox, no.

Q. At the time of the operation of the Paradise Theatre you were operating six other theatres, is that right? A. In Detroit?

Q. In Detroit or thereabouts.

(Testimony of Alex Schreiber.)

A. Approximately six theatres.

Q. And you still operate the Paradise Theatre?

A. We do.

Q. During the time that you were operating the Paradise Theatre and in getting ready to operate it you spent a great deal of your time in Detroit, didn't you?

A. What do you mean by a "great deal of time?" [1568]

Q. Well, you spent about half of your time away from Los Angeles? A. It is possible.

Q. Well, it is not only possible but it is true, isn't it? A. Not unless I checked the time.

Q. Well, I can check the time with you if you want to make a point of it.

Do you want to dispute the question that I say you spent about half the time away from Los Angeles?

A. No, I won't dispute it. I say it is possible.

Q. And it is also so?

A. I spent as much time as was required in Los Angeles to take care of my business, and I spent as much time as was necessary in Detroit to take care of my business, plus the fact that I had a daughter and three grandchildren or two grandchildren at that time, and the rest of my family was in Detroit. I spent some time with my family also.

Q. Well, you spent about half of your time away from Los Angeles, didn't you?

A. That is possible, yes.

Q. And the operation of your theatre was actu-

(Testimony of Alex Schreiber.)

ally carried on by Marco Wolff—that is, the buying and booking was carried on by Marco Wolff from August to December, 1950, and by this exhibitor service from 1950 to September, 1951? [1569]

A. That is correct. They were the buyers and bookers—they were the buying and booking service only.

Q. They are the ones that selected what pictures you were going to play or going to buy?

A. They are the ones that tried to secure pictures for the Paradise Theatre. They had no financial interest in the Paradise Theatre.

Q. I understand that, but this day-to-day function of getting pictures you didn't carry on at all—it was carried on by Marco and by Syd Lehman largely?

A. That is correct. They did the negotiations and held the conferences and the telephone calls and the visits with the distributors, yes.

Q. Now, you are familiar with the theatres in the area involved in this litigation and you are familiar with who operates those theatres.

The Paradise is your theatre. The Loyola is a Fox-West Coast theatre operated by Fox-West Coast, right? A. That is correct.

Q. The La Tijera is operated by, or was operated during this period of time by William Kupper?

A. He was the general manager and the man that I understand was doing the buying and booking of pictures for the La Tijera Theatre.

Q. And he had no connection with Fox-West

(Testimony of Alex Schreiber.)

Coast at all? [1570] A. I don't know.

Q. Well, he was what you would call an independent, isn't he? A. Yes. [1571]

Q. But you consider yourself an independent?

A. Yes.

Q. And you consider they are an independent?

A. I would say so, with the exception that H. J. Griffith had an interest in the theatre, and that was a large chain of theatres of Texas and Oklahoma.

Q. You had an interest in other theatres, too, didn't you?

A. Just with my associates. No chains.

Q. Just a group?

Mr. Corinblit: Six.

The Witness: If you want to make a comparison, I can say, if I can do it without being condemned by the judge——

Q. (By Mr. Mitchell): No. I say you call your theatres just a group?

A. A group or an independent chain of theatres. Rather than somebody calling out the theatres at one time, when they want to talk about the Schreiber theatres, instead of calling the individual theatres, they will say the Schreiber group of theatres or the Schreiber chain of theatres.

Q. Do you know who operated the Centinela Drive-In?

A. Centinela Drive-In was operated, from all I know, I believe they called themselves the Alladin Drive-In Theatres, managed by the men I knew in there, Jack and Izzie Berman.

(Testimony of Alex Schreiber.)

Q. Not connected with Fox Theatres? [1572]

A. I don't know.

Q. You don't know too much about the motion picture operation in this Los Angeles community?

A. I don't know what theatre interests people have. I can tell you my theatre interests. I don't know what other people have. Just what I heard.

Q. The Fox Theatre was operated by Fox West Coast?

A. I understand the Fox corporation theatre chain operated the Fox Theatre.

Q. During the period of the operation of your Paradise Theatre, the United Artists Theatre was operated by the United Artists Theatres Circuit, right? A. I understand that is correct.

Q. The Academy and Fifth Avenue were both operated by what you call the Fox West Coast chain, right? A. That's right.

Q. The Southside Theatre was operated by Marco Wolff?

A. Yes, but I believe he called it the Southside Theatre Corporation, which was the same corporation that was booking and buying for the Paradise, but had no interest in the Paradise Theatre financially. They just were a booking service. That's all the corporation was. We had nothing to do financially with the Southside Theatre or the Southside Theatre Corporation had nothing to do with the Paradise.

Q. I understand that. [1573]

A. It was just a booking service only.

(Testimony of Alex Schreiber.)

Q. And the man that did the booking for the Paradise Theatre in 1950 was Marco Wolff?

A. With the assistance of his brother Roy and with the advice and counsel of my son Max and myself when I was in town or over long-distance telephone.

Q. He also did the buying and booking for the Southside, didn't he, Marco? A. Oh, yes.

Q. And he also did the buying and booking for the Baldwin Theatre, didn't he?

A. I understand he did, yes. That was his theatre.

Q. You know he did, don't you?

A. I understand he did, yes, but I did not know whether it was the Southside Corporation or another corporation, Mr. Mitchell.

Q. But regardless of what we call the corporate name, it is Marco Wolff, isn't it? A. Yes.

Q. And it is Marco Wolff that does the buying and booking for the Manchester Theatre, right?

A. That's right.

Q. And also for the Rio?

A. That is correct.

Q. And also for the Paramount Downtown and the Paramount Hollywood Theatres? [1574]

A. That is correct.

Q. The Rio Theatre, as we say, was operated by Marco. The Imperial Theatre on Imperial Boulevard was operated by Mr. Kupper, wasn't it?

A. That is correct.

(Testimony of Alex Schreiber.)

Q. Century Drive-In, do you remember who the Century Drive-In was operated by?

A. They called themselves the Pacific Drive-In Theatres, and the head man of that organization now is a party by the name of Bill Forman. Whether he was the head man in 1950 or 1951, I don't remember. I believe there was Gus Diamond and a fellow named Cabrillo, I think were the big men then, and I believe those are former Fox men or associated with Fox.

Q. Well, when you started looking for a theatre site, there wasn't any La Tijera, was there, when you started looking for a theatre site?

A. In 1947?

Q. Yes.

A. I don't believe they had bought their property yet.

Q. And there wasn't any Southside?

A. In 1947?

Q. Right.

A. I don't remember when they bought that property.

Q. Would it sound right if I told you they started operating in September, 1949? [1575]

A. That sounds like the right time. September 1949.

Q. There wasn't any Rio?

A. In 1947, you are asking me?

Q. Yes, when you first came out here.

A. I don't know whether it was open in 1947.

(Testimony of Alex Schreiber.)

Q. There wasn't any Imperial, either, was there?

A. Imperial? I remember the Imperial being built, because the contractor that built our theatre took me and showed me the Imperial Theatre while it was under construction, but I don't know the time that it opened.

Q. It opened before your theatre opened, didn't it?

A. I don't know. I believe it did.

Q. So did the Rio?

A. I believe it did, but I am not sure.

Q. The Fox Theatre in downtown Inglewood was rebuilt in 1949, wasn't it, or was built?

A. It was rebuilt because that is another theatre that the contractor that built the Paradise took me to while he was rebuilding the theatre.

Q. The Century Drive-In started operating in June 1949?

A. I don't know when they started.

Q. Before you started operating, didn't they?

A. Century?

Q. Yes. [1576]

A. They may have, but I am not positive.

Q. The Centinela Drive-In started operating in April 1950, is that right, about?

A. Before we did?

Q. Yes, before you did.

A. I don't know. I don't think so, but it is possible.

Q. Well, there was a considerable number of new theatres came in there in the period from 1949

(Testimony of Alex Schreiber.)

to 1950, were there not? You remember that, don't you? A. 1949 to 1950?

Q. Yes.

A. Yes, there were a lot of theatres built and there were a lot of people.

Q. That's right, a lot of theatres built down in the Inglewood-Westchester area.

A. Yes, and a lot of people.

Q. A lot of new ones?

A. A lot of people and a lot of factories.

Mr. Mitchell: This is a good place, if your Honor wishes to stop.

The Court: That is one thing I have got counsel trained on in this court. When it is 12:00 o'clock, right on the dot, they are ready to quit.

Mr. Mitchell: I don't have eyes in the back of my head, but I hit it on the nose. [1577]

The Court: Ladies and gentlemen of the jury, again we are about to take another recess. Again it is my duty to admonish you you are not to discuss this case with anyone, you are not to allow anyone to discuss it with you, you are not to formulate or express any opinion as to the rights of the parties until the case is finally submitted to you.

With that admonition, we will now recess until 2:00 o'clock this afternoon.

(Thereupon, a recess was taken to 2:00 p.m.)

Thursday, July 25, 1956, 2:00 p.m.

The Court: Do you stipulate the jury are present and in the jury box?

Mr. Corinblit: So stipulated.

Mr. Mitchell: Yes, your Honor.

The Court: You may proceed.

ALEX SCHREIBER

the witness on the stand at the time of recess, having been heretofore duly sworn, resumed the stand and testified further as follows:

Cross Examination—(Continued)

Q. (By Mr. Mitchell): Mr. Schreiber, in your long experience in the motion picture exhibition business, you are familiar with the fact that motion pictures are licensed in successive runs?

A. I don't know what you mean by "successive runs."

Q. Well, first run, second run, third run, and so on.

A. Yes.

Q. And a picture doesn't play all the theatres in a community at the same time. It plays in successive runs, isn't that the way the pictures are played?

A. Usually all over the city. I think they release the same way.

Q. All over the country they play in successive runs, [1579] don't they?

A. Yes.

Q. First run and then a second run and then a third run and then a fourth run, and so on until the picture has exhausted its grossing capacity?

A. That is right. They have a first run maybe downtown and multiple first run and second run can be played all over the city—three prints, five prints, 20 prints.

(Testimony of Alex Schreiber.)

The third run can be 20 prints, 30 prints. Like Paramount will release the picture—you will notice in the paper 29 runs. That may be 29 21-day runs. Then there will be maybe 20 and 29-day runs and then maybe 30 and 35-day runs.

They go down the line but they run all over the city, but they are released in steps.

Q. You call them steps? A. Yes, sir.

Q. I think Judge Yankwich called them staggered runs.

The same picture will play first in one theatre and then in another theatre and then in another theatre, and so on?

A. But all over the city.

Q. Week after week?

A. They can play all over the city.

Q. In varying ways they play successively?

A. Yes, but all over the city.

Q. You recognize the fact that some exhibitors have to [1580] play first and somebody second, and so on—you recognize that, don't you?

A. Yes, but there are still a lot of second and a lot of third and there are a lot of fourth—

The Court: Suppose you answer the question. Do you understand the question?

The Witness: Yes. I was wondering if he means one first, second, third, fourth, fifth, and sixth. That isn't true.

Q. (By Mr. Mitchell): I don't mean any special number, Mr. Schreiber. I mean that some exhibitor

(Testimony of Alex Schreiber.)

or exhibitors have to play first and some of them have to wait until later.

A. Yes. If you say "some," yes — if you say "some," yes.

The Court: May I ask this witness a question?

The Witness: Yes, sir.

The Court: You understand what is meant by runs and clearances, do you not?

The Witness: I do—I think I do.

The Court: As used in the motion picture industry?

The Witness: I believe I do.

The Court: Based upon your 30 years' experience in the motion picture industry, don't you believe that runs and clearances are necessary for the orderly exhibition of motion pictures? [1581]

The Witness: Yes, sir.

Mr. Mitchell: Thank you, sir.

Q. (By Mr. Mitchell): And you also recognize that a distributor of motion pictures, the owner of the picture just can't please all exhibitors?

Mr. Corinblit: I will object to that, your Honor, as calling for a conclusion of the witness—"can't please all exhibitors."

Mr. Mitchell: He is an expert and he should be able to answer that question.

The Court: If all exhibitors were satisfied it would be an exception, I think, rather than the rule.

I don't know of any industry in which all the retailers are satisfied, for instance.

Mr. Corinblit: Producers or distributors.

(Testimony of Alex Schreiber.)

The Court: And I don't know of a case where all lawyers are satisfied. You may proceed.

Mr. Mitchell: You mean you want me to ask that question?

The Court: Go ahead. I haven't stated an objection.

Q. (By Mr. Mitchell): All right. Well, you recognize the fact that a distributor can't please all his customers, don't you? A. That is right.

Q. Every exhibitor with a good theatre wants to play just as early as he can, doesn't he? [1582]

A. That is right.

Q. And he wants to pay just as little film rental as he can? A. Not necessarily.

Q. I see.

The Court: You mean to say there isn't always a contest between the exhibitor to get the film for as little as possible and for the distributor to get as much as he can out of a film?

The Witness: Well, that is the way the distributors say. They say that the exhibitors want to steal the film and the exhibitors say the distributors want to take the last dollar.

The Court: You said "not always." In negotiations you are always negotiating, aren't you, for just a little bit less money or a little better terms?

The Witness: Yes, your Honor, but they don't let us negotiate.

The Court: I am not talking about that. I am talking generally and not specifically.

The Witness: Generally the negotiations is what

(Testimony of Alex Schreiber.)

is being done and maybe 95 per cent of all the theatres in the United States are negotiating for pictures, yes, sir.

The Court: And to get them on the best terms possible?

The Witness: That is right. One wants it cheap and another one wants to pay a high price. [1583]

Q. (By Mr. Mitchell): That is what I asked you. It is a barter business? A. It is.

Q. No fixed price for a picture. Each one is a scrap in which the exhibitor tries to get it as cheaply as he can and the producer tries to get as much out of it as he can?

A. That is right. [1584]

Q. Now, with respect to this desire of exhibitors to play as early as possible, you know, don't you, that the La Tijera tried to get first run Los Angeles day and date with the show case theatres from all the distributors, don't you know that?

A. I understand they tried that, yes, sir.

Q. They tried?

The Court: Just a minute.

Q. (By Mr. Mitchell): And when they didn't get——

The Court: Just a minute, Mr. Mitchell.

Mr. Mitchell: I'm sorry.

The Court: Did they try that before you tried it?

The Witness: Yes, they did.

The Court: They tried it before you?

The Witness: Yes.

Q. (By Mr. Mitchell): And they didn't get it?

(Testimony of Alex Schreiber.)

A. They did get some pictures, I understand.

Q. Well, they sued?

A. They went to court from what I understand and what I was told when I came to Los Angeles.

Q. Would it refresh your recollection if I say to you that the only first run pictures they got were one or two United Artists pictures?

A. I remember——

Q. Well, you can answer that yes or no, either you remember [1585] or you don't.

A. I don't remember if it was only United Artists, no, I do not.

Q. I see.

A. I know they did play some United Artists, but whether they were all or not, I do not know.

Q. You know, also, that the Southside Theatre tried to get first run Los Angeles day and date with the showcase theatres, don't you?

A. No, I don't know whether they tried first run.

Q. Didn't Marco ever tell you that?

A. No, I don't believe so.

Q. Didn't he ever tell you that they sued, also?

A. The Southside?

Q. The Southside Theatre.

A. I don't think so. It was the Manchester and Baldwin.

Q. We will come to them. You don't know about the Southside? A. No, I really don't.

Q. The Manchester Theatre is another theatre run by Marco Wolff? A. That's right.

Q. He sued on behalf of that theatre because he

(Testimony of Alex Schreiber.)

hadn't been given first run Los Angeles day and date with the show case theatres, didn't he? [1586]

Mr. Corinblit: Just a minute. Your Honor, I will object to that question as being irrelevant and immaterial. It may be Mr. Mitchell wants us to bring into evidence the lawsuits of other independent theatres and the rejection by the defendants of every independent theatre that ever tried. I don't think he wants to do that. I think we are going into an area that is going to be very broad. I will object on those grounds.

The Court: Overruled.

Q. (By Mr. Mitchell): Do you remember the question now?

The Court: Just a minute.

The Witness: I am trying to remember what you asked me.

The Court: Just a minute, Mr. Schreiber. I think I should tell the jury that in my evaluation of this case, I think there are two problems here for the jury to consider relative to whether or not there was a conspiracy. First, was there a conspiracy relative to first run? And, second, was there a conspiracy relative to 7 day run?

We have evidence here about first run Los Angeles and we have evidence about 7 day run in Inglewood or the Westchester area. So remember now there are two problems or questions for you to answer.

Was there a conspiracy relative to first run? You

(Testimony of Alex Schreiber.)

may decide there was no conspiracy relative to first run. [1587]

Was there a conspiracy relative to 7 day run in Inglewood? You may decide there is a conspiracy on 7 day run.

So remember, now, you have got two areas here in which you are going to decide this question of conspiracy.

All right, Mr. Mitchell.

Mr. Mitchell: By your statements, your Honor, you don't mean to infer in any way that there was or was not a conspiracy on either first run or 7 day?

The Court: Oh, no. I am not indicating to the jury anything at all. I am trying to explain to you the problem. I don't want you to get any idea in your mind that I have any opinion as to whether there was not a conspiracy. The fact of the matter is that I am keeping an open and free mind and I have come to no conclusion, just as you are doing. You shouldn't come to any conclusion.

But I am trying to point out to you this problem. This is a two-fold problem. When they talk about first run Los Angeles, remember there is the question of the first run conspiracy. When they talk about the 7 day run, it is the conspiracy in the Inglewood-Westchester area.

Q. (By Mr. Mitchell): Let me ask the question again so it will be a little fresher in your mind. You knew Marco Wolff on behalf of the Manchester had tried to get first run Los Angeles day and date with the show case theatres and when [1588] he

(Testimony of Alex Schreiber.)

failed he sued? A. That's right. I know that.

Q. You know that the same thing happened in respect of the Baldwin Theatre which Marco also operated?

A. I knew he had a lawsuit, yes, sir.

Q. You knew he was trying to get first run Los Angeles, didn't you? A. That's right.

Q. And you also knew that the Crown Theatre in Pasadena, represented by the same attorney that represented you, Mr. Seymour Simon, was trying to get first run Los Angeles for the Crown, and when he didn't get it, sued, don't you?

A. I don't know if he tried first run or if he tried 7 day run, but he did have a lawsuit which was settled.

Q. You knew also that the Picwood Theatre over in the West Los Angeles area had tried to get first run Los Angeles, and when it didn't get it, sued?

A. I don't know if they sued for first run or 7 days, but they got 7 days, I understand, in their suit.

Q. Well, they bid.

Mr. Corinblit: Oh, now, now, don't state the contrary facts.

Q. (By Mr. Mitchell): You know they bid?

A. No. I understand that they made a division of product with Fox Village and Fox Bruin Theatres, and eventually [1589] moved from 7 days to where they are now playing first run Los Angeles pictures.

Q. On a bid? A. And are very successful.

(Testimony of Alex Schreiber.)

Q. On a bid? A. First run?

Q. On a bid? A. First run, yes.

Q. That's right.

A. First run on bid, first run Los Angeles.

Q. You knew, also, that the Bard's Adams over on West Adams Street, somewhere near the Baldwin Theatre, tried to get first run?

A. I know nothing about the Bard Theatre.

Q. Did you play double bills in your theatre, Mr. Schreiber? A. Which theatre?

Q. Paradise.

A. Did we play double bill?

Q. Yes. A. Yes, we did.

Q. Who made the determination of whether you would play double bills or single bills?

A. Who made the determination?

Q. Yes. [1590]

A. It was a policy in Los Angeles to play double bill and we played what the other theatres were playing.

Q. You made the decision, didn't you?

A. For the Paradise Theatre?

Q. Yes. A. Yes, sir.

The Court: Mr. Mitchell, I think possibly somebody could explain what is meant by double bill. I understand what is a double bill. Maybe the jury doesn't.

What is a double bill?

The Witness: Double bill is two complete features on the same program. Some theatres, if they are in a certain locality and are lucky, being located

(Testimony of Alex Schreiber.)

where they are, can play on the same program two top pictures. Without mentioning names, it might start an argument here, they try, the exhibitor tries to get two good pictures, and then when they play two good pictures on a program, my own experience, where I was in the lobby of the theatre, I heard the people come out and they would say, "Gee, that was a wonderful picture." They talked about one of them. "But why did you play the other picture. That was terrible."

And right behind them, two or four people would come out and say, "Gee, that was a wonderful picture, but why did you play the other picture?" They were talking about the other picture. One or the other of them was good. [1591]

It is hard to please the people.

So maybe you put two good pictures, maybe a musical and an action, maybe a western, an action, maybe a melodrama, a mystery. You try to put two good pictures on the bill to please your entire audience, if that is possible, with one picture or the other.

Q. Anyway, for your theatre, you make the determination of whether you play a double bill policy or a single picture policy?

A. That's right, except, Mr. Mitchell, occasionally a good picture comes out two hours and 20 minutes or two hours and 30 minutes, and you will play that alone with what we call a featurette, about 30 minutes.

Q. You make that decision for your theatre,

(Testimony of Alex Schreiber.)

don't you? A. That's right.

Q. You would also recognize the right of a distributor to decide how many pictures he will make available in a given area, wouldn't you?

Mr. Corinblit: Well, your Honor, I object to that as calling for a conclusion, because recognizing a right is a question of law, not a question of fact.

The Court: He asked about what a distributor does. Read the question.

(Question read.)

The Court: Objection overruled. You can answer [1592] that yes or no.

The Witness: Yes, but may I explain the reason for the yes?

Q. (By Mr. Mitchell): One reason is that he owns the picture, doesn't he? A. Yes.

Q. All right.

A. There are other reasons in addition to that. May I answer that or continue with the question?

Q. As far as I am concerned, you have answered the question. You recognize the right, so that is it, so far as I am concerned. Maybe your attorney will want to ask you when it comes his turn.

Mr. Corinblit: Mr. Mitchell, you made a great play about wanting people to have an opportunity to explain answers, and I think the witness ought to be permitted, if he wants to explain, to go ahead.

The Court: I don't know how the answer needs explaining. He says he recognizes the right.

Mr. Corinblit: Well, perhaps it doesn't need it. I won't press the point. [1593]

(Testimony of Alex Schreiber.)

Q. (By Mr. Mitchell): Mr. Schreiber, before you ever asked any distributor for a motion picture for your Paradise Theatre you hired a lawyer, didn't you?

The Court: Mr. Mitchell, my experience has been that motion picture producers, motion picture distributors, motion picture exhibitors need lawyers. They have been hiring lawyers for years and years and years and every theatre has a lawyer.

Mr. Mitchell: Perhaps that has been your experience, your Honor, because you get these lawsuits, but——

The Court: Maybe a lot of theatres don't need lawyers.

Mr. Mitchell: But people, the theatres that buy pictures don't usually start out with a lawyer, your Honor.

Mr. Corinblit: All the distributors have them, your Honor, every one of them.

The Court: Ordinarily these exhibitors form a corporation and the first thing they have to do is employ a lawyer to form a corporation. So lawyers are necessary evils. No question about it. Sure, he had a lawyer.

Mr. Mitchell: Well, let us go on then.

Q. You hired Seymour Simon, didn't you?

A. I did.

Q. Before you ever asked a distributor for a picture.

The Court: Mr. Mitchell, let us clarify this. Remember that this witness was in Detroit. He had

(Testimony of Alex Schreiber.)

theatres in Detroit. [1594] I don't know whether he hired Mr. Simon when he was in Detroit for his theatres in Detroit, or whether he hired Mr. Simon to represent him out here in California.

Now, clarify for what purpose he was hiring a lawyer. Was he employing him for the Detroit theatres or did he employ him for the Los Angeles theatre?

Q. (By Mr. Mitchell): Answer the judge's question, if you will.

A. I will be glad to. Mr. Seymour Simon was hired by me for my Detroit theatres when they told us we just couldn't get any run, any second run on the drive-in theatre. That is when I hired Mr. Seymour Simon and we went on——

Q. We don't need to go into your Detroit business. You had litigation in Detroit too, then.

Mr. Corinblit: Now, Mr. Mitchell doesn't want him to finish his answer, your Honor.

The Witness: I hired Mr. Seymour Simon when I was there in Detroit, because there also I couldn't get pictures or we couldn't get pictures or our company could not get any pictures. Mr. Seymour Simon very easily got us pictures.

If I didn't have Mr. Seymour Simon I would never have gotten those pictures. I may have gotten them later.

The Court: Let me ask you a question. When did you first employ Mr. Simon?

The Witness: In about March or April when I met him in [1595] New York, of 1950, prior to the

(Testimony of Alex Schreiber.)

opening of our theatre in August 1950, prior to that.

The Court: You hired him first in March or April?

The Witness: That is right.

Mr. Corinblit: Your Honor, the witness does not understand your question, sir, as he indicated.

The Court: I don't know. You may not understand it, but the witness understood it. He answered the question.

I will ask the witness again, when did you first employ Mr. Simon?

The Witness: In Detroit?

The Court: When?

The Witness: Oh, about two years prior to the Paradise Theatre opening—maybe three years prior when I had trouble getting pictures in Detroit.

Q. (By Mr. Mitchell): When did you first hire Mr. Simon in connection with the Paradise matter?

A. I believe in about February, March or April of 1950.

Q. And it was Mr. Simon who helped you draft the original demand that you made for first run Los Angeles dated February 6, 1950?

A. If I can look at the letter and see the wording I can tell you if it is my wording or possibly Mr. Simon's.

(Document handed to the witness.)

Q. This is Plaintiff's Exhibit 6-A. [1596]

A. No. I may have dictated this, written this letter with the help of my associates in Detroit, who

(Testimony of Alex Schreiber.)

is an attorney, or my son-in-law in Detroit, who is an attorney.

Q. But Mr. Simon didn't help you in connection with that letter?

A. He may have and he may not have. I don't remember.

Mr. Mitchell: Let me have the transcript.

Mr. Corinblit: There is no quarrel about it, Mr. Mitchell.

Mr. Mitchell: You mean he is wrong about it?

Mr. Corinblit: You took his deposition, 1,500 pages worth, and his answer was that Mr. Simon helped him draft the letter. There is no question about that.

The Court: Will you stipulate to that?

Mr. Corinblit: Certainly, your Honor. No question about that. There is no problem there.

Mr. Westbrook: And Mr. Simon testified that he drafted the letter.

Mr. Corinblit: And we read that into the record.

Q. (By Mr. Mitchell): Now, Mr. Schreiber, Mr. Simon told you to prepare a memorandum of all meetings with the distributors, didn't he?

A. He did.

Q. And this was in preparation for this lawsuit, wasn't it? [1597]

A. No. *it* never thought of a lawsuit.

Q. He also wrote the letter dated April 17, 1950, in which a demand was made for first run Los Angeles. What is that exhibit number?

Mr. Westbrook: 6-H, Plaintiff's 6-H.

(Testimony of Alex Schreiber.)

Mr. Corinblit: It was written by Seymour Simon and we will stipulate that Mr. Simon sent the letter that he signed.

The Witness: Yes. This wasn't my letter. This was Mr. Simon's letter.

Q. (By Mr. Mitchell): And he accompanied you to New York for these meetings with the distributors.

A. He did.

Q. Right?

A. Yes, sir.

Q. And then you wrote a letter dated August 22, 1950, complaining about the requirement of bidding which is Plaintiff's Exhibit 6-M.

(Document handed to the witness.)

Q. And Mr. Simon helped you prepare that, didn't he?

Mr. Corinblit: We will so stipulate.

Mr. Mitchell: Very well. It isn't necessary to answer the question. Counsel so stipulated.

The Witness: All right.

Q. (By Mr. Mitchell): Columbia and RKO gave you a seven-day run without bidding, didn't they? [1598]

Mr. Corinblit: When was that, counsel?

The Witness: I was just going to ask that.

Q. (By Mr. Mitchell): Did they give you a seven-day run without bidding prior to the filing of this lawsuit?

A. Prior to the filing of the lawsuit?

Q. Yes.

A. Yes.

Q. And Warners, Universal, Paramount and

(Testimony of Alex Schreiber.)

Loew's would not give you a seven-day run without bidding, right? A. I believe that is right.

Q. So you sued the last four corporations and you did not sue Columbia or RKO, right?

Mr. Corinblit: I object to this question. It is a matter of record as to who the defendants are in this case and who they are not.

The Court: Overruled.

The Witness: Yes, we also sued Fox West Coast Theatres.

Q. (By Mr. Mitchell): I understand that. You testified with respect to your meeting of March 30th in Mr. Hickey's office where you went to see if you get Loew's product.

He told you that Loew's would not license you first run Los Angeles, didn't he?

A. That is right.

Q. He told you that Loew's wanted to license its pictures one run on Hollywood Boulevard and one run downtown, [1599] isn't that right?

A. I believe he told me that is the way they were releasing their pictures at that time.

Q. And that Loew's wasn't going to license to you or to any other suburban city or to a theatre in any other suburban city—that they were going to have two showcase runs, is that right?

A. I believe that is right.

Q. They also told you that if they should start licensing to the Paradise they would be confronted with demands for first run from all of these surrounding cities like Huntington Park, Pasadena,

(Testimony of Alex Schreiber.)

Glendale, San Fernando Valley, Westwood, and so on. Didn't they tell you that?

A. That is what he told me.

Q. And they just weren't going to do it.

A. That is what he said.

Q. In testifying with respect to the refreshing of your recollection from a memorandum, I think you didn't make quite clear what I believe you meant to say.

Mr. Hickey told you that he would like to see Loew's take back the Loew's Theatre downtown and use that for an exclusive first run of Metro product. Do you remember saying that?

A. He said he would like that personally and also——

Q. All right. And then he said following that exclusive [1600] first run he would like to sell 14 or 15 of the larger theatres on a day-and-date run, isn't that right?

A. Yes, that is right.

Q. That is what he said?

A. Yes, but continue it, please.

Q. Well, please, let me conduct the examination.

Now, with respect to Inglewood Mr. Hickey told you that he would make Loew's product available to you on a seven-day run if you would bid for the pictures against the La Tijera, the United Artists, the Fox and the Academy Theatre. Is that right?

A. I don't know whether it was all those theatres. I believe it was the Inglewood Theatres and La Tijera. He may have mentioned them individually. I don't remember at this time.

(Testimony of Alex Schreiber.)

Q. There was no mention of bidding against the Southside, the Rio, the Imperial or the Centinela or Century Drive-Ins, was there?

A. Not the Century and the Centinela. At that time they were not playing seven-day pictures, but I believe he said all theatres in Inglewood and Southside, Imperial, Rio.

Q. Then did you understand him to say that Loew's would require you to bid against the Southside and Imperial in Inglewood? A. I did.

Q. As a matter of fact, they didn't require you to do so.

A. I understood him to require us to bid.

Q. No, just listen to my question. As a matter of fact, when you got your theatre opened they did not require you to bid against Southside, Rio or Imperial, did they?

Mr. Corinblit: You are talking about Loew's?

Mr. Mitchell: Loew's.

The Witness: I don't know without referring to my memorandum.

Q. (By Mr. Mitchell): It has nothing to do with your memorandum. I am asking you what happened commencing August 23, 1950. Loew's sent you requests for offers, didn't they, or do you know anything about it?

A. Yes, but I believe the Southside was included in there.

Q. Probably your counsel will stipulate otherwise, but we will straighten it out. I think there is

(Testimony of Alex Schreiber.)

a letter which we can show you to refresh your recollection.

A. Mr. Mitchell, this letter says that—requesting us to bid against the Academy. Southside isn't mentioned in here.

Q. Maybe that is the letter we are looking for. You tell me the ones that you were to bid against on Loew's product.

A. (No response.) [1602]

Mr. Mitchell: Those aren't the ones.

Q. Loew's was serving, as a matter of fact, the Southside on that 21 day availability, do you remember that? A. No, I do not.

Q. I will show you an original letter on the letterhead of Metro-Goldwyn-Mayer from Thomas J. Aspell, Jr., to Mr. Marco Wolff, with a copy to Mr. Alex Schreiber, and ask you to state whether you recognize that letter.

The Court: May we identify the letter?

Mr. Mitchell: It is a letter dated September 9, 1950.

The Court: I mean by the identification number.

Mr. Mitchell: It is defendant Loew's D-7 for identification.

Mr. Corinblit: Before you answer, Mr. Schreiber, I would like to take a look at the letter, but go ahead and read it.

Mr. Mitchell: Here is a copy (handing document to Mr. Corinblit).

You will agree, Mr. Corinblit, that letter was sent and received?

(Testimony of Alex Schreiber.)

Mr. Corinblit: Yes.

Mr. Mitchell: I will offer it in evidence.

The Court: It may be received in evidence.

The Clerk: Loew's Exhibit D-7. [1603]

(The exhibit referred to was received in evidence and marked as Defendant Loew's Exhibit D-7.)

The Witness: Yes, I believe I remember that letter. [1604]

* * * * *

Q. (By Mr. Mitchell): Does that refresh your recollection that Loew's required you to bid only against those named theatres? A. Yes, sir.

Q. And not against the Southside, the Rio or Imperial? A. That's right.

Q. And at some point during these discussions you had with Mr. Hickey, you told him you wouldn't bid?

A. I told him I wouldn't bid against theatres that were not in substantial competition with us, and I didn't want to bid against theatres when they were negotiating with the theatres that they claimed were bidding. They were not bidding. Prior to the opening of the Paradise Theatre, they were negotiating for pictures. They had a deal in Inglewood and——

Mr. Mitchell: Now, the conclusion of the witness that they had a deal in Inglewood——

The Court: It may go out.

Q. (By Mr. Mitchell): Your counsel will argue the case for you, Mr. Schreiber. If you will just

(Testimony of Alex Schreiber.)

give us a chance, we will get along all right on the argument.

The fact is that Loew's sent you requests for bids all during the year 1950 after you opened, isn't that right?

A. I don't remember the period, Mr. Mitchell, but they did send us letters for bids.

Q. Requesting you to bid?

A. Yes, sir. [1605]

Q. You just wouldn't bid?

The Court: With a very few exceptions. There was some bidding, wasn't there? It may not have been with Loew's, but there were some.

Mr. Mitchell: I can tell you, your Honor.

The Court: There were a few pictures on which there were bids.

Mr. Mitchell: Yes, there were some pictures that Marco bid for from Loew's.

Q. Did Marco bid with your permission?

A. I left the buying and booking of pictures to Mr. Wolff. Whatever he saw proper to secure pictures for the Paradise Theatre while he was booking and buying was strictly his own doing. We followed his recommendation, and whatever he did we approved.

Q. You were personally opposed to the Paradise Theatre bidding for Loew's pictures?

A. I was opposed to bidding in the Paradise Theatre with theatres that were not in substantial competition with us.

Q. And you considered that none of these thea-

(Testimony of Alex Schreiber.)

tres was in substantial competition with you, is that the idea?

A. Except the Loyola Theatre, yes, sir.

Q. They weren't requiring you to bid against the Loyola. I am talking about the La Tijera, the United Artists, the [1606] Academy, the Fifth Avenue and the Fox. A. That's right.

Q. Those theatres you considered were not in substantial competition with you?

A. That is correct.

The Court: Now, just a minute. May I ask this witness a question? You said you didn't bid because the theatres were not in substantial competition.

The Witness: That's right.

The Court: Did you determine whether or not the theatres were in substantial competition or not in substantial competition before the Paradise Theatre was built?

The Witness: Yes.

The Court: Then all you did was to go down and locate a site for your theatre and then come to the conclusion that if a theatre was built on that site, it wouldn't be in substantial competition with these other theatres?

The Witness: That's right. We figured we were not going to be in competition with any other theatre. We were going to be in just Westchester and we had enough business in Westchester to support a \$450,000 investment.

The Court: You came to that conclusion without making any survey, except talking to the service

(Testimony of Alex Schreiber.)

station operator and the drug store man, and the people up and down the business section of Westchester? [1607]

The Witness: Yes, where they attend theatres, and went to the schools and inquired, and circled up and down all the side streets, looked over the houses, et cetera.

The Court: Somewhere in the evidence that has been introduced was a letter that was written either by you or Mr. Simon in which you asked the distributors to show you why they thought that the theatres in Inglewood were in substantial competition, and you said it shouldn't be a guess or a conjecture, that you should have the facts.

What facts did you have other than a guess or conjecture before you built your theatre, that it was not going to be in substantial competition?

The Witness: If we thought — answering that question, your Honor——

The Court: Do you remember the number of the exhibit of that letter? What is the exhibit number?

Mr. Corinblit: I think you have it in front of you, Mr. Schreiber. That is the letter of August 22, 1950.

Mr. Mitchell: That is the one Mr. Simon wrote for him.

The Court: Let me see it.

(Witness handing document to the court.)

The Court: You say here: "You cannot make a determination as to whether two theatres are or are not in substantial competition on the basis of guess

(Testimony of Alex Schreiber.)

or hunch. We [1608] therefore want to know what facts and figures you have to support the conclusions of your Los Angeles exchange manager that the Paradise and the Academy were in substantial competition, and we want the opportunity to examine these facts and figures.”

This was written August 22, 1950.

You mean to say that before the Paradise Theatre was built you determined that there would be no substantial competition between the Paradise Theatre and theatres in Inglewood?

The Witness: Your Honor, the theatre was built and ready to open on the 22nd. We opened on August 23rd.

The Court: Just listen to my question. I said before the theatre was built you determined in your own mind that there was no substantial competition between the theatre to be built and the theatres in Inglewood?

The Witness: That's right.

The Court: Now, other than any guess or hunch that you had as to whether there was no substantial competition, will you tell me what facts and figures you had to support your conclusions?

The Witness: Yes, sir. I will be glad to.

The Court: All right. What were they?

The Witness: I investigated the entire Westchester area before we bought the property and before we went to an [1609] expense and obligation of \$445,000 or \$450,000.

The Court: I am just interested in what you did.

(Testimony of Alex Schreiber.)

You testified on direct examination you talked to a service station man, you talked to a man from the drug store, you talked to people in the business district, and this business district occupied only three blocks long and one block wide.

The Witness: That's right.

The Court: What else did you do?

The Witness: At the schools, I went around the schools.

The Court: Yes, I know.

The Witness: I circled up and down all the streets, north of Manchester, south of Manchester, east of Sepulveda, west of Sepulveda, that entire area. Then I used my 30 some odd years of show business, and thank goodness I was successful during that 30 years, and I used all that experience to make my decision. When we went to the distributors in——

The Court: That's all right. That is what you base your conclusion on?

The Witness: That's right.

The Court: That the Paradise Theatre was not going to be in substantial competition with the Inglewood theatres.

The Witness: Plus the fact that we were willing to play day and date without—— [1610]

The Court: Now, just answer the question. That is all I want to know.

You asked the distributors to do certain things. You wanted to know what facts they had and I was just interested in what facts you had.

(Testimony of Alex Schreiber.)

The Witness: Thank you.

Q. (By Mr. Mitchell): Mr. Schreiber, you knew that Loew's was only going to license one 7-day run in that area, didn't you?

A. I knew they were going to——

Q. They told you they were only going to license one 7-day run in the southwest Los Angeles area?

A. They told me that in February, March or April, I believe it was, yes, when our theatre was under construction.

Q. And you recognized the right a moment ago of the distributors to decide how many runs they were going to offer in a given area?

A. That is right.

Q. So Loew's, you recognize, has the right to say they are going to have one? A. Yes.

Q. Now, in order to get that run there are going to be a number of theatres down in that area that would like to play seven days—that is an advantageous run, isn't it? [1611]

A. That is right.

Q. And the La Tijera would like to play it?

A. That is right.

Q. And so would the Academy?

A. Yes, sir.

Q. Or the Fox and the United Artists and the Fifth Avenue? A. That is right.

Q. And so did you? A. That is right.

Q. You wanted to play it?

A. That is right.

Q. So with all of those theatres wanting to play

(Testimony of Alex Schreiber.)

it and there being just one run they are all going to have to compete with each other, aren't they, for the run?

A. Not necessarily. They don't have to compete.

Q. Well, if they want to get it, there is only one way to get it and that is to compete with each other, isn't it?

A. Not necessarily.

The Court: How can they get it without competition?

The Witness: Metro can give it to the United Artists theatre and say, "That is the theatre I want to serve." That is what Mr. Mitchell asked me, if they have a right to sell the picture and designate the theatre.

The Court: Assuming you are the manufacturer of an [1612] article and you wanted a distributor in a city like Pasadena, for instance, as the manufacturer of that article you have a right to go to Pasadena and pick out the ABC store and say, "I am going to give to the ABC store the exclusive right to sell this merchandise in Pasadena."

Do you think you would have a right to do that?

The Witness: I imagine that manufacturers would have the right to give that merchant exclusive right on the article.

The Court: Supposing a manufacturer was a motion picture company and they manufactured a motion picture and went over to Pasadena and said, "Here is one theatre we are going to give the exclusive right in this community to show our product." Isn't that perfectly all right?

(Testimony of Alex Schreiber.)

The Witness: I don't know. [1613]

* * * * *

Q. (By Mr. Mitchell): Now, Mr. Schreiber, talking about first run Los Angeles, if a distributor licenses only one run, one run in the Los Angeles metropolitan area, the theatre playing that one run will attract customers from all parts of the Los Angeles metropolitan area, won't it?

A. It will.

Q. That means—let's take as an example The King And I, which is now playing exclusively in the Chinese. You [1628] are aware of that.

A. It is playing there now, yes, sir.

Q. That theatre will attract customers from Pasadena, won't it?

A. I imagine it will, yes.

Q. And from Inglewood? A. Yes.

Q. And from Westchester? A. Yes.

Q. And from Huntington Park? A. Yes.

Q. And from Westwood? A. Yes.

Q. Glendale? A. Yes.

Q. San Fernando Valley? A. Yes.

Q. You will agree, won't you, that Cinerama, which ran for how long—it ran for a couple of years, didn't it, in the Warner's Theatre?

A. Yes. It is still running.

Q. Cinerama Holiday is there now, isn't it?

A. Oh, yes, that's right.

Q. The original Cinerama ran a very long time. I forget, but it was a couple of years, wasn't it?

A. I believe it was around two years, yes.

(Testimony of Alex Schreiber.)

Q. That was the only theatre in Southern California playing that picture.

A. That is correct, because there is a reason.

Q. Whatever the reason may be, the owners of Cinerama played Cinerama in just one theatre. It takes a lot of equipment to play it.

A. That is what I wanted to say.

Q. I will agree with you it takes a lot of equipment to play it, but they played it in only one theatre.

A. Yes.

Q. And it drew people from all over Southern California.

A. Yes. But, Mr. Mitchell, it can't play in any other theatre in Southern California.

Q. All right, but playing in just the Warner's Theatre, it drew people from way out as far as San Bernardino and other outlying points, isn't that right?

A. Yes, sir.

Q. We have already talked about how The King And I draws customers from the entire metropolitan area. That means, that the operator of a theatre having a single run can charge high admission prices, can't he, higher than if there were a whole lot of theatres playing?

Mr. Corinblit: Your Honor, I will object to that [1630] because it calls for a conclusion and speculation.

Mr. Mitchell: It undoubtedly calls for a conclusion.

Mr. Corinblit: No foundation.

The Court: This man has 30 years' experience.

(Testimony of Alex Schreiber.)

He should know. Of course, the testimony so far is that one of the reasons for having an exclusive is because they can get higher prices. Of course, it costs more money to put it on, but they pass that on to the customer and the customer pays higher prices. That is already in evidence.

If this witness doesn't know—well, I think he does.

You know, don't you?

The Witness: I sure do.

Q. (By Mr. Mitchell): It is a fact he can charge higher prices, isn't it?

A. It is a fact Cinerama and Oklahoma are running at higher admission prices in those two theatres, and there are no other theatres in Southern California that can run them even if they want to run them for 50 cents. They can't run them because those two theatres were especially equipped with \$50,000 to maybe \$85,000 worth of equipment for each one of those theatres. Those are the only places those pictures can play.

Q. I know.

A. They can't play at the Loyola and they can't play [1631] at the Paradise.

Q. All right.

A. They are not regular pictures.

Q. But let's talk about The King And I. The King And I, you can play The King And I in the Paradise in due course if you pay enough money to get it, right?

A. Yes, we can, if we can get it.

(Testimony of Alex Schreiber.)

Q. If you pay enough, you can get it?

A. That's a question.

Q. All right. Let's take pictures like *The King And I* or *Shane* or any of these other pictures that have played single runs. They draw from this large area.

Mr. Corinblit: Your Honor, I object to this question for the very simple reason that we are covering a period in this case roughly of 1950 and 1951. If your Honor will examine the play-off in evidence on this point, you will find that pictures went in and out like a machine. During this period you do not have this kind of exclusive runs ordinarily, and while I realize we have expanded the period for some purposes, it does not represent on this fact the kind of a question that is material here. I will object on that ground.

The Court: Mr. Mitchell has a wide grin on his face.

Mr. Corinblit: Yes.

The Court: You are objecting to something you have [1632] already done. You have expanded this period.

Mr. Corinblit: Yes, sir, I have.

The Court: For certain specific reasons.

Mr. Corinblit: That's right.

The Court: Here is another reason. Mr. Mitchell has a reason he wants to expand it.

Mr. Corinblit: If we can have it established that this long run policy is something that recently occurred in general——

(Testimony of Alex Schreiber.)

Mr. Mitchell: We can't have it established because it is contrary to the fact.

The Court: Objection overruled.

Go ahead, Mr. Mitchell, I have overruled the objection.

Q. (By Mr. Mitchell): Let's go to your time. Let's talk about King Solomon's Mine. That played two theatres, didn't it?

A. I don't remember, but I would presume it would. It was a big picture.

Q. Loew's State and Egyptian?

A. I believe it did.

Q. Playing those two theatres and not playing any place else day and date, they drew patronage from all of the Los Angeles metropolitan area, right?

A. They would draw from all areas, yes, sir.

The Court: Mr. Mitchell, you are just overlooking the classic example. I don't know how you have overlooked it. Nobody has mentioned *Gone With The Wind* in this case.

The Witness: That is too new. You should take *The Birth of a Nation*.

The Court: The fact of the matter is *Gone With The Wind* has never played at popular prices, has it?

The Witness: Oh, yes.

The Court: To this day.

The Witness: Oh, yes.

Mr. Westbrook: It didn't for many years, your Honor.

(Testimony of Alex Schreiber.)

The Witness: We played it in Minneapolis at popular prices.

Q. (By Mr. Mitchell): You will admit that if theatres downtown and on Hollywood Boulevard are playing exclusive first runs, people from Westchester are going to go downtown, some people are going to go downtown to see that picture?

A. Very few, yes, sir.

Q. Those that are in a hurry to see it will go downtown, won't they?

A. Yes, sir, or Hollywood.

Q. Or Hollywood, yes. Perhaps to Hollywood.

A. Yes.

Q. Let's take the first subsequent run, which is what [1634] we call the 7 day run. Sunset Boulevard was a picture released during this period. Do you remember Sunset Boulevard? A. I do.

Q. That was a picture produced by Paramount.

A. It was.

Q. And it starred Gloria Swanson in a big comeback of Miss Swanson's? A. That's right.

Q. And it was itself, I guess it was a runner-up in the Academy Awards, wasn't it, and it received many Academy Awards for various features in the picture?

A. It did. We have the picture up in our Academy Award Court.

Q. It was an outstanding picture, wasn't it?

A. It was.

Q. If Sunset Boulevard were to have been shown in Inglewood on a 7 day availability, and if it were

(Testimony of Alex Schreiber.)

not shown day and date in Westchester, some people in Westchester would not wait for it to be shown there, but would go to Inglewood to see it, wouldn't they?

A. Yes, if they wanted to see the picture, yes, they would.

Q. And on other pictures shown in Inglewood one run on the 7 day availability, those that wanted to see that picture earlier than a later run in Westchester, those people in Westchester [1635] would come in to Inglewood to see it, wouldn't they?

A. If it is a big picture early run, they would draw some people from Westchester to go to Inglewood, yes.

Q. Whether it was a big or little picture, if there were people in Westchester that wanted to see the picture early, they would come to Inglewood?

A. Yes, if they wanted to see the picture. If it was a small picture and they wanted to see it, even if it was a small picture, earlier, they would go to Inglewood, yes, sir.

Q. You think a theatre on a 7 day availability in Westchester could perhaps get a gross of some four to six thousand dollars on a 7 day run, isn't that right? A. Yes, sir.

Q. And on the other hand, on a 21 day run, it could only gross say from \$1800 to \$2400?

A. And even less than that.

Q. And even less? A. That's right.

Q. So there are about \$2,000 to \$4,000 worth of

(Testimony of Alex Schreiber.)

admissions in Westchester that go into Inglewood to see an earlier run, isn't that right?

A. Impossible. Impossible.

Q. I want to show you a document marked Joint Distributors' Exhibit M-1 and ask if you recognize the signature of your son Max Schreiber on the verification of that complaint. [1636]

A. Yes. That is my oldest son's signature.

Q. Is that the boy that was helping you run this theatre?

A. That's right. He is the boy right behind you on your right side.

Q. You commenced a lawsuit against the labor union known as the International Alliance of Theatrical Stage Employees and Motion Picture Machine Operators of the United States and Canada, commonly known as the IATSE, didn't you?

A. Commonly known as the Operators Union, yes.

Q. The international is known as the IATSE?

A. Yes, sir.

Q. One of the locals of the international is the union to which all motion picture operators belong, right?

A. Not all of them, but the majority of them do.

Q. I didn't know there were any that didn't belong. All right.

This verification by your son says that the facts stated in the complaint are true.

You understand what a verification is?

Mr. Corinblit: Your Honor, there is no founda-

(Testimony of Alex Schreiber.)

tion laid for that. We don't have any showing with respect to relevancy.

The Court: The foundation is all right, but what *is* [1637]

* * * * *

Mr. Mitchell: Since counsel won't agree with me, I want to establish that this is a sworn statement. Perhaps I can read enough of it to show that it is a sworn complaint.

The Court: It is a verified complaint in which the party verifying it states the information contained therein is true. The complaint was filed by the corporation and the party who verified it, I suppose, was an officer of that corporation.

Mr. Corinblit: Yes, that is correct. We will stipulate to those facts. [1640]

Mr. Mitchell: He is the vice president.

Mr. Corinblit: Yes.

Mr. Mitchell: And when you say "verified," your Honor, you mean it is sworn to before a notary public?

The Court: Yes, sworn to before a notary public.

Mr. Mitchell: Now, I am going to read paragraph 2 of the second cause of action, which starts on page 10, and ends on page 11:

"Among the theatres which are competitive to the Paradise Theatre in the exhibition of subsequent run feature motion pictures are:

"Academy Theatre, 3141 West Manchester Boulevard, Inglewood, California. Approximately 1,200 seats.

(Testimony of Alex Schreiber.)

"The Fifth Avenue Theatre, 2541 West Manchester Boulevard, Inglewood, California. Approximately 1,000 seats.

"United Artists Theatre, 148 North Market Street, Inglewood, California, approximately 1,000 seats.

"Fox Inglewood, La Brea Boulevard at Queen Street, Inglewood, California, approximately 1,050 seats.

"Of the aforementioned theatres, the Academy, Fifth Avenue and Fox are operated by Fox West Coast Theatres Corporation, and the United Artists is operated by a subsidiary of United Artists Theatres Circuit, Inc. Prior to 1950, the United Artists Theatres was [1641] operated by a subsidiary of Fox West Coast Theatres Corporation, and until the death of Charles P. Skouras in 1954, the president of the United Artists Theatres Circuit, Inc., George Skouras was the brother of the president of Fox West Coast Theatres Corporation, Charles P. Skouras."

And the verification reads, "Max Schreiber"—
Is it all right to read this?

The Court: Yes.

Mr. Mitchell: "Max Schreiber being duly sworn, deposes and says: That he is an officer of the Paradise Theatre Building Corporation, the plaintiff in the within and above-entitled action; that he has read the within and foregoing amended complaint for injunction and damages and knows the contents thereof; that the same is true of his own

(Testimony of Alex Schreiber.)

knowledge, except as to the matters which are therein stated on his information and belief, and as to those matters that he believes it to be true.

“Affiant is authorized to make this verification for plaintiff on behalf of said corporation.

“Subscribed and sworn to before me this 3rd day of June, 1955,”

and that is signed “Max Schreiber—Subscribed and sworn to before me this 3rd day of June, 1955, Joan Q. Bove, Notary [1642] Public in and for said County and State.”

Mr. Corinblit: Your Honor, if Mr. Mitchell will offer the entire complaint in evidence I will have no objection.

The Court: Well, I only ruled upon that portion that was read. When the time comes you can offer the rest of it.

Mr. Corinblit: All right, sir.

The Court: May I ask this witness a question?

Mr. Mitchell: Certainly.

The Court: Do you have an opinion—do you have a different opinion than your son as to whether or not these theatres are in substantial competition?

The Witness: We have a lot of differences of opinions, whether the theatres are in substantial competition or other matters and these theatres—we are pretty well agreed on which theatres are and which are not.

The Court: Well, now, here is a verification of a complaint in which your son says, as a representa-

(Testimony of Alex Schreiber.)

tive of the corporation, that they are in substantial competition.

Mr. Corinblit: Your Honor, you did not—that is the point. The words are “competitive.” Your Honor, the words are “competitive.” There is no statement with respect to substantial competition. Not a word. Just the words that Mr. Mitchell read. That is why I objected to it, because I didn’t feel it was material. It was just that the theatres are competitive. There is not a word in the complaint as to substantially in competition—substantial competition or the statement——

The Court: All right. You can argue that to the jury.

Mr. Corinblit: There is no quarrel between us on the question. You may have competition between theatres, but the issue is substantial competition. There is no quarrel on either side with that point.

Mr. Mitchell: I would say there is considerable quarrel if they are in competition. If they are in competition, they are in competition and were at that time in 1955. The La Tijera closed——

The Witness: In 1955.

Mr. Mitchell: Yes, the La Tijera was closed.

The Witness: They were closed, yes, sir. [1644]

Q. (By Mr. Mitchell): All right. Now, do you recall that your company requested clearance over the La Tijera Theatre. Do you recall that?

A. I recall in seeing some of the letters that Marco Wolff sent in that he called for clearance on

(Testimony of Alex Schreiber.)

the La Tijera Theatre on a few pictures, maybe three, maybe six, maybe ten. I don't remember, but there were some letters that Marco Wolff put in with clearance because the film companies asked him to make his offer or bid with clearance on the La Tijera Theatre.

Q. You were there and heard the film companies say that, were you? A. I was not there.

Q. You really don't know about that, do you, Mr. Schreiber?

A. I know what Mr. Marco Wolff told me.

Q. All you know is what Marco Wolff told you?

A. Yes. He was our agent. Yes, I asked him why he inserted that and Mr. Marco Wolff told me he was asked to put it in his bid that way.

Q. All right. Now, you are accustomed to doing the things which these film companies ask you to do, is that right?

A. Oh, sometimes you have got to jump through their fingers like that, if you want their pictures.

Q. Well, in these instances you were bidding for the picture, were you not?

A. Marco Wolff?

Q. Yes, Marco Wolff, your company through Marco Wolff was bidding for the pictures?

A. He was bidding on some of the pictures, yes, sir, because that was the only way he could get it or he was making offers.

Q. When you made a bid you, in these instances, in claiming clearance over the La Tijera, you were—that is a statement, isn't it, or a repre-

(Testimony of Alex Schreiber.)

sentation that the La Tijera is in substantial competition with your theatre?

A. On those particular pictures, if Mr. Wolff put in there clearance, yes, sir.

Q. All right. The Paradise Theatre Company acting through Mr. Wolff claimed clearance over the La Tijera, on Paramount picture called Fancy Pants on October 17, 1950. Right?

A. On that picture he did ask for clearance on the La Tijera, yes, sir.

Q. And also on October 24, 1950, on the Paramount picture Union Station Mr. Wolff asked for clearance over the La Tijera Theatre, didn't he?

A. In his letter he did.

Q. And on the Paramount picture Tripoli under date of [1646] December 3, 1950, he asked for clearance over the La Tijera Theatre, is that right?

A. No. My son asked for clearance.

Q. I am sorry. Your son asked for clearance?

A. He did.

The Court: May we have a stipulation as to the distance between the Paradise Theatre and the La Tijera Theatre. You put it on the board this morning when you put the distances on the board, but I don't think you put that distance on the board.

Mr. Westbrook: I believe 2.1 miles according to the stipulation.

Mr. Corinblit: We will stipulate to that.

The Court: Two decimal what?

Mr. Corinblit: 2.1.

Q. (By Mr. Mitchell): All right. And on De-

(Testimony of Alex Schreiber.)

cember 3, 1950, your son on the Paramount picture Copper Canyon asked clearance over the La Tijera Theatre, is that right? A. Yes, sir.

Q. And on the Warner Bros. picture The Breaking Point, Marco Wolff on behalf of your company asked clearance over the La Tijera, isn't that correct?

A. Yes, sir. And he Xed out all of the other theatres in Inglewood.

Q. That is right. That was on—I think the date is [1647] up in the left-hand corner there. It was on September 5, right?

A. That is correct.

Mr. Corinblit: With respect to this document, will you stipulate that Warners sent out those letters with all of the theatres named?

Mr. Mitchell: They sent out the letter that reads like this:

“The maximum clearance to be granted on this run shall be 7 days following Los Angeles first run closing clear of Fox and United Artists-Inglewood, La Tijera, Imperial, Southside, Los Angeles,” and on this particular document that I just asked the witness about, the names of all of those theatres, except La Tijera, are crossed out.

Mr. Corinblit: May I look at it?

Mr. Mitchell: Is that a fact you want me to agree to?

Mr. Corinblit: I don't think you mentioned the Academy at the end of the line. You will find the

(Testimony of Alex Schreiber.)

Academy where it is Xed out. Are you looking at the Breaking Point 7 days?

Mr. Westbrook: I believe the clearance reference to the two companies, United Artists Theatres Circuit and Fox Theatres would cover all their theatres. [1648]

Mr. Corinblit: All right. That is the stipulation.

Mr. Mitchell: That is correct, yes.

The Court: May I ask a question?

Mr. Mitchell: Yes.

The Court: The jury is going to have to draw inferences from some of this testimony. The facts are presented to the jury and the jury is going to draw an inference.

They may draw the same inference as the court draws or they may draw the same inference as counsel draws, or they may disagree. [1649]

Now, is it proper to say that in this particular instance where Paradise asks for clearance over the La Tijera Theatre and crossed out all the other theatres, that in this particular instance Paradise is saying, "We are in competition or substantial competition with La Tijera and we are not in substantial competition with the other theatres?"

Is that a fair inference?

Mr. Corinblit: I don't believe so.

The Court: Why not?

Mr. Corinblit: For this reason, your Honor. I might ask—because you have—you could ask the other question, "When did the distributors license pictures day and date between the La Tijera and

(Testimony of Alex Schreiber.)

the United Artists Theatre”—you could ask the other question, “Did the distributors license day and date between the La Tijera and United Artists Theatre?”

Mr. Mitchell stipulated that happened on occasion and they are only—how far apart are they? A mile or two miles or something like that.

Mr. Westbrook: Just slightly under two miles.

Mr. Corinblit: You could ask the question, “Were the distributors saying there is no substantial competition between Inglewood and La Tijera?” If you ask one of the witnesses on the stand they will—one of the distributor witnesses, they will say there was substantial competition. It didn’t make any difference. They would license these [1650] theatres day and date without regard to substantial competition. As far as they were concerned, when it came to licensing other theatres, they would license them whether they were in substantial competition or not.

The Court: But, as I understand, and I haven’t looked at the exhibit, but as I understand this request was presented to Paradise and Paradise X-ed out the other theatres.

The Court: Only left in the La Tijera.

Mr. Corinblit: That is correct.

The Court: Then is it fair to say that a proper inference is that in this particular instance the only substantial competition was between Paradise and La Tijera? [1651]

Mr. Corinblit: No, sir. I think all you can say

(Testimony of Alex Schreiber.)

from it is in this particular instance the Paradise did not ask for clearance over the other theatres, but did ask for clearance over the La Tijera.

The Court: Mr. Mitchell, we ought to have your impression about the inference to be drawn.

I might say to the jury that you don't have to follow either one of these attorneys. You come to your own conclusion. You draw your own inference.

What inference do you think should be drawn, Mr. Mitchell?

Mr. Mitchell: I infer from it that Mr. Wolff is saying he is in substantial competition with the La Tijera and he isn't saying whether or not he is in substantial competition with the others, but he is saying he doesn't mind if they play day and date. He doesn't want any clearance.

The Court: All right. If that is your interpretation, all right, but this is something for the jury to determine.

Q. (By Mr. Mitchell): Now, on September 22, 1950, on a Warner Bros. picture, Mr. Wolff asked clearance over all of the Inglewood theatres, that is, over the United Artists and the Fox theatres, meaning all of the Fox theatres, we have agreed upon, in Inglewood, that is the Fifth Avenue, the Academy and the theatre called the Fox, and over the La Tijera, [1652] Imperial, and Southside in Los Angeles, isn't that right?

Mr. Corinblit: Before you answer, Mr. Schrei-

(Testimony of Alex Schreiber.)

ber, I haven't seen this document, that is, I haven't seen it right now.

Mr. Westbrook: You have looked at it, counsel. You haven't seen it right now. (Handing document to Mr. Corinblit.)

Mr. Corinblit: All right. Now you can answer the question.

The Witness: Clearance in this contract, Three Secrets, calls for clearance——

Mr. Corinblit: Just a minute. May I take a look at that once more, please?

The Witness: Yes.

Mr. Corinblit: Do you have the original of this, counsel?

Mr. Westbrook: We may very well, but you can see Mr. Wolff's signature through the carbon.

Mr. Corinblit: I can see the signatures to the carbon, but there is a quarrel about whether there was any X'ing out that has come through. There is some question about X'ing out here.

The Witness: This is not an approved contract. This is only an application.

Q. (By Mr. Mitchell): That's right. On this application he asked clearance over the Fox Theatres in Inglewood, the United Artists Theatre, the La Tijera, Imperial, and Southside in Los Angeles, isn't that right?

A. No. Mr. Wolff didn't ask for clearance over the theatres you have just mentioned.

Mr. Mitchell: I will offer the document in evidence.

(Testimony of Alex Schreiber.)

The Witness: This is application.

Mr. Corinblit: Your Honor, we will have, one of these days, Mr. Wolff to explain this.

The Court: It may be received in evidence. What is the designation?

Mr. Mitchell: The designation is "Competitive Bid Application." Actually, the date it is executed is September 29, 1950.

The Court: Has it been marked for identification?

Mr. Westbrook: It has been marked Plaintiff's Exhibit 10-J.

The Clerk: It is already in evidence, your Honor. [1654]

The Court: Already in evidence. All right.

* * * * *

Mr. Mitchell: Yesterday, we had introduced Defendants' Exhibit 10-J. I guess it is Plaintiff's 10-J, which is the bid made by Marco Wolff on September 29, 1950, to Warner Bros. for Three Secrets and there was some question raised about the original.

We have here a photostatic copy of the original, which is the same as Plaintiff's Exhibit 10-J, except that it bears on it the stamp "Rejected," which we will offer in evidence. [1660] Perhaps it can be made a part of Exhibit 10-J or possibly we can have a stipulation, but, at any rate, we are producing the original.

Mr. Corinblit: I think it should be a separate exhibit.

(Testimony of Alex Schreiber.)

The Court: In evidence.

The Clerk: Warner's Exhibit H-2.

(The document referred to was received in evidence and marked as Warner's Exhibit H-2.)

* * * * *

Mr. Corinblit: Counsel, in order to make it clear I take it it is our stipulation that this document was sent to Mr. Wolff with those entries on it and was returned to the Warner files and nothing was stricken out. That is what we are talking about here, is that correct? [1661]

Mr. Mitchell: That is what he did, yes. He sent it in with nothing stricken out.

Mr. Corinblit: All right.

Q. (By Mr. Mitchell): Now, on the Warner picture Rocky Mountain under date of October 5, 1950, Mr. Wolff struck out all of the clearance requests, except La Tijera, leaving a request of Paradise for clearance over the La Tijera on the seven-day availability.

A. That is correct, but all the other theatres, I believe you mentioned, were X'ed out.

Q. That is right, requesting clearance over the La Tijera. A. That is correct.

Q. Which is a theatre you thought was not in substantial competition with the Paradise.

A. That is still my opinion.

Q. Right? A. Yes.

Q. Now, on the Warner picture Glass Menagerie on October 19, 1950, Mr. Wolff for the Paradise

(Testimony of Alex Schreiber.)

Theatre claimed clearance over the La Tijera on the seven-day availability, right?

A. That is correct. The rest are all X'ed out.

Mr. Corinblit: I think we should have these exhibits [1662] in evidence, counsel. Are you offering them in evidence?

Mr. Mitchell: I wasn't, but I am perfectly willing that they be in evidence. When I get through I will be glad to put them all in.

I thought you didn't want to stipulate to them going in, but I will do it your way.

Mr. Corinblit: I haven't had any trouble in stipulating to that.

Mr. Mitchell: When I get through I will offer the whole bunch.

Q. (By Mr. Mitchell): The Warner picture Break Through on November 1, 1950, Mr. Wolff on behalf of the Paradise claimed clearance over the La Tijera.

A. Yes. The rest of the theatres are all X'ed out. [1663]

Q. On the Universal picture Desert Hawk, on August 18, 1950, Mr. Wolff claimed clearance over the La Tijera, right?

A. On that picture, Mr. Mitchell, Marco Wolff's letter asks for just playing time ahead of the Loyola and La Tijera Theatres only.

Q. We have used this word clearance rather loosely here, Mr. Schreiber. You understand that clearance is an agreement between the prior exhibitor and the distributor that the distributor will have

(Testimony of Alex Schreiber.)

an elapse of time before the next exhibitor can show it. Do you understand that?

A. Not exactly the way you explained it.

Q. I see. You understand a prior availability is a situation where the arrangement is that the prior exhibitor shall play the picture and it shall not become available until the next availability, the next run, without necessarily any elapse of time; understand that?

A. Well, I am trying to understand it. The way you are explaining it, if you don't mind, could I explain it my way?

Q. No. I would like to ask the questions instead of you trying to argue with me.

A. All right.

Q. If you don't mind.

A. Then I will tell you I don't understand it the way you asked me.

Q. All right. [1664]

A. Would you ask it a little different?

Q. All right. We are talking about the Paradise and the La Tijera. If the Paradise gets a picture on a 7 day run and wants a priority of run over the La Tijera, that means that the La Tijera shall not play the picture during the 7 day run, but may play the picture on a 14 day run? A. Yes.

Q. That's right, isn't it, that is priority of availability?

A. That is what we call in our business a 7 day—no, that is the following day. That is no clearance.

(Testimony of Alex Schreiber.)

Q. That is no clearance?

A. No clearance. That is just playing time clearance only.

Q. That is playing priority of availability, isn't it?

A. That's right, but there is clearance where there is a 7 day clearance after the last playing day of the prior theatre that is running the picture, and there is also a 14 day and a 21 day and there is a six months.

Q. I am sure there is no disagreement between you and me. A. Fine.

Q. We will try to talk the same language on this. A. Fine.

Q. I want to be sure you understand what I am saying. [1665] So that if the Paradise wins a bid on a 7 day availability and the distributor is selling a 14 day availability, then the Paradise will probably play the picture 7 days, and if the La Tijera buys a 14 day availability immediately following 7 days, without any elapse of time, to-wit, 14 days after the close downtown Los Angeles, he will start playing?

A. That's right, but there will be no clearance.

Q. No clearance.

A. Except playing time clearance only.

Q. Well, there would be no—let's leave the word clearance out of the matter. There would be no elapse of time between the close of the Paradise run and the start of the La Tijera run?

Mr. Corinblit: Just a minute.

(Testimony of Alex Schreiber.)

Mr. Mitchell: Let the witness answer without telling him how to answer.

The Witness: He doesn't have to tell me how to answer. I know the answer.

Mr. Corinblit: It is self-evident if one closes on the 7 and one opens on the 14, there is no elapse of time.

Mr. Mitchell: All right. Now he has told you, Mr. Schreiber.

The Witness: I stated that there is playing time clearance only, but there was no clearance time between.

Mr. Mitchell: Don't try to follow Mr. Corinblit. You just answer my questions. [1666]

Mr. Corinblit: Now, Mr. Mitchell.

Q. (By Mr. Mitchell): Let's start again. Let's suppose the distributor is licensing a 7 day availability and a 14 day availability in the Inglewood-Westchester area. A. Or any area.

Q. Or any area for that matter, yes. Nothing particularly is implied there. But just to visualize it, we will talk about that area. A. Fine.

Q. That means that the 7 day availability starts 7 days after close of downtown Los Angeles or Hollywood, or 7 days after close of first run.

A. That's what it means.

Q. That's what it means?

A. But it wasn't used all the time.

Q. But we are talking about what it means. Let's not try to get confused. The 14 days means 14 days after close of first run?

(Testimony of Alex Schreiber.)

A. That is correct.

Q. All right. If the 7 day run goes to the Paradise and you play it for 7 days, and then the La Tijera has bought the 14 day run, it can on the 8th day start playing the 14 day run.

A. That is correct.

Q. And there is no elapse of time between the two. [1667]

A. That is correct.

Q. And you call that priority of availability, don't you?

A. You call it 7 day availability and a 14 day availability. If you want to use any other words, it's all right with me, Mr. Mitchell.

Q. You have heard the expression that under that situation the Paradise would have priority of availability?

A. Yes, if they bought the picture on 7 day availability.

Q. All right. So far so good. Now, let's suppose that the distributor is licensing a 7 day run in the Inglewood-Westchester area and then isn't licensing any 14 day run, but is licensing 21 day run. Let's suppose the Paradise buys the 7 day run, and that the distributor says to the Paradise, either in writing or by some oral arrangement, "We will not allow any other theatre in the Inglewood-Westchester area to play this picture until 7 days after close of the Paradise," that would be clearance, wouldn't it?

A. That would be 7 day clearance, that's right.

(Testimony of Alex Schreiber.)

Q. All right. So clearance is the elapse of time by agreement? A. That's right.

Q. All right. I am sure we understand each other.

A. Would you want to—all right, go ahead.

Q. Thank you.

Mr. Corinblit: Do you want to hear the full story from the witness?

The Witness: Yes. I want to make sure we understand one another, the purpose of that 7 days in there, Mr. Mitchell.

Q. (By Mr. Mitchell): All right. On Desert Hawk, the Universal picture Desert Hawk, what Marco Wolff asked for there was prior of availability, wasn't it? A. Yes.

Q. All right. Over the La Tijera Theatre.

A. And the Loyola.

Q. All right, and the Loyola.

A. And, Mr. Mitchell, may I make a comment, that the Desert——

Q. I think you have answered the question now. I am sure you have a lot of things you would want to say to me, and we can do that another time. You just answer my questions now and we will get through this case some time this summer.

Mr. Corinblit: Mr. Mitchell wasn't so anxious when his witnesses were on the stand to stop them from making a full explanation.

The Court: No argument now. I am inclined to be sympathetic with Mr. Mitchell. I would like to get through this case pretty soon. [1669]

(Testimony of Alex Schreiber.)

Q. (By Mr. Mitchell): On the Universal picture *Shakedown*, on September 26, 1950, Mr. Wolff on behalf of the Paradise requested clearance over the La Tijera? A. That is correct.

Q. On a 7 day run. A. That's right.

Q. On the Universal picture *Woman On The Run*, on the 7 day run, under date of October 30, 1950, Mr. Wolff asked clearance over the La Tijera, correct? A. Only.

Q. Only. When I don't mention somebody else, I mean only. A. Okay. [1670]

Q. On the Universal picture *Woman On The Run* under date of November 7, 1950—

Mr. Westbrook: Deported.

Mr. Mitchell: I am sorry. This is *Woman On The Run*.

Q. I am speaking of on November 7, 1950—that is a 14-day availability picture. I am sorry.

Universal was offering in the Inglewood-Westchester area both a 7-day availability or really from time to time two 7-day availabilities and one or more 14-day availability, isn't that right?

A. I believe they were offering that.

Q. Then also a 21-day availability?

A. I believe that is correct, Mr. Mitchell.

Q. And that same thing was true of Paramount. Paramount was offering two 7-day availabilities and two 14-day availabilities?

A. That is correct.

Q. And no restricted number of 21-day availability? A. (No answer.)

(Testimony of Alex Schreiber.)

Q. Or do you remember?

A. I think they—I think they only had one 21-day availability. I am not positive.

Q. All right. And in respect to Warner Bros., they were offering either one, two, three and even one four 7-day availabilities and were also offering 14-day availability? [1671]

A. They started out with one but over a period of maybe a year's time or eight months' time they started off with three prints after six or eight months, after our theatre opened, and I think there was one picture they gave four 7-day runs.

Q. And then they also offered 14-day runs?

A. Oh, yes.

Q. Now, on the picture *Deported* on a 7-day run, the Universal picture, under date of November 7, 1950, Mr. Wolff on behalf of the La Tijera claimed, on behalf of the Paradise, claimed clearance over the La Tijera, is that right?

A. That is correct.

Q. On the Universal picture *Kansas Raiders* on a 7-day availability under date of November 15, 1950, Mr. Wolff claimed clearance over the La Tijera, correct? A. That is correct.

Q. On the Loew's or Metro-Goldwyn-Mayer picture *The Next Voice You Hear*, on a 7-day availability, Mr. Wolff claimed clearance over the La Tijera. Correct?

A. That is correct, but he has another statement in there which would practically mean the same thing.

(Testimony of Alex Schreiber.)

Q. Well, that is correct, isn't it? There isn't any qualification to that? A. That is correct.

Q. That is a bid on a Metro picture?

A. That is correct.

Q. On the Metro picture King Solomon's Mines under date of November 7, 1950, Mr. Wolff on behalf of Paradise Theatre claimed clearance over the La Tijera. Right?

A. I am reading the letter, Mr. Mitchell. That is correct.

Q. Where he uses the word "clearance" in these bids, Mr. Schreiber, without specifying any number of days, doesn't that word "clearance" as used there mean to play immediately following the La Tijera—the La Tijera is to be permitted to play immediately following the Paradise if you won the bid?

A. Yes. This interpretation would be that the La Tijera could play the very next day.

Q. What we are talking about—what we were talking about a moment ago is priority of availability? A. That is right.

Q. On the Metro picture The Miniver Story under date of October 30, 1950, Mr. Wolff on behalf of the Paradise claimed clearance over the La Tijera? A. That is correct.

Q. On the RKO picture Treasure Island, under date of August 18, 1950, Mr. Wolff claimed the right to play ahead of the La Tijera, correct?

A. And Loyola, and that particular picture was on a 14-day availability.

Q. You are correct.

(Testimony of Alex Schreiber.)

Mr. Mitchell: In the introduction of these, so as to avoid any confusion that I have now caused here by talking about a 14-day availability, we will leave that one out unless you want it in particularly.

Mr. Corinblit: No, you can leave it out.

Mr. Mitchell: Q. The RKO picture *Edge of Doom* on a 7-day availability, Mr. Wolff on behalf of the Paradise claimed clearance over the La Tijera? A. That is correct.

Q. On the Columbia picture *The Last of the Buccaneers* and *Between Midnight and Dawn*, under date of November 10, 1950, Mr. Wolff on behalf of the Paradise claimed clearance over the La Tijera. Correct? A. That is correct.

Q. On the Columbia picture *Between Midnight and Dawn* on the 7-day availability under date of November 6, 1950, Mr. Wolff acting on behalf of the Paradise Theatre claimed clearance over the La Tijera. Correct? A. That is correct.

Q. On the Columbia picture *Harriett Craig*, on the 7-day availability under date of December 3, 1950, your son on behalf of the Paradise Theatre claimed clearance over [1674] the La Tijera. Correct? A. That is correct.

Mr. Mitchell: Now, counsel has requested that these be offered in evidence.

Mr. Corinblit: We will be glad to have them go in as plaintiff's exhibits.

Mr. Mitchell: I think most of them, if not all of them, are marked Plaintiff's exhibits, so we can put

(Testimony of Alex Schreiber.)

them in with the identification numbers, if that is satisfactory.

Mr. Corinblit: We can put them in as they are marked as plaintiff's exhibits, because I was going to offer them all before I conclude.

Mr. Mitchell: I will do that then.

Mr. Westbrook: Plaintiff's Exhibit 2-E. Plaintiff's Exhibit 2-F. Paramount's Exhibit I-1. Paramount's Exhibit I-2. Joint Distributors Exhibit P-18. Plaintiff's Exhibits 26-O; 26-P; 22-B. Exhibit 6-Z. 7-C. 6-X. 15-A. 14-V. 14-R. 14-N. 14-J. 10-P. 10-N and 10-L.

The Court: They may be received in evidence. Show them in.

Mr. Westbrook: There is also another one that is not in evidence yet, and that is Warner's Exhibit H-1.

The Court: It may be received. [1675]

(The exhibits heretofore marked Plaintiffs' Exhibit 2-E, 2-F; Paramount's Exhibits I-1 and I-2; Joint Distributors Exhibit P-18; Plaintiff's Exhibits 26-O; 26-P, 22-B, 6-Z, 7-C, 6-X, 15-A, 14-V, 14-R, 14-N, 14-J, 10-P, 10-N, 10-L and Warner's Exhibit H-1, were received in evidence.)

Mr. Mitchell: I offer those documents in evidence.

The Court: They have been received.

Q. (By Mr. Mitchell: Mr. Schreiber, I will show you here a list of theatres with the heading, "Theatres in Territory of Paradise," and ask you

(Testimony of Alex Schreiber.)

if you have seen that before? (Handing document to the witness.)

A. Yes, I have seen this before.

Q. Will you tell the jury what it is?

A. I will be glad to. It is a list of theatres in the territory of Paradise. It lists the theatres, the seating capacity, the run that they were playing of the pictures and who the operators or the owners of the theatres were. [1676]

Q. And who prepared it?

A. I had this prepared, I believe by Keith McCallum. He works for Exhibitors Service.

Q. What were your instructions to him with respect to the preparation of this?

A. I just asked him to get me a list of theatres and the seating capacity and on what availability they were running pictures.

Q. In the territory of the Paradise?

A. That's right. Not the Paradise, all over. This would be—he has the Alto Theatre in there. That is nowhere near the Paradise.

Q. We will come to that in a minute.

A. Okay.

Mr. Mitchell: I will offer the document in evidence, your Honor.

Mr. Corinblit: We will have no objection, your Honor, provided it is stipulated this document was a part of another document, and Mr. Mitchell has pulled it out of another document.

The Court: If you can establish it is part of an-

(Testimony of Alex Schreiber.)

other document, you may be able to introduce the rest of the document.

Mr. Corinblit: Yes, sir. Thank you.

The Court: Objection overruled. This may be admitted. [1677]

The Clerk: Has this been marked?

Mr. Mitchell: No, it hasn't been marked.

Mr. Corinblit: I think before we go any further, we ought to establish it was part of Exhibit—will you give us the number of the defendant's exhibit?

Mr. Westbrook: I believe we have marked it in evidence.

Mr. Corinblit: Just a minute. I will get the one from which it was taken.

The Clerk: Joint Distributors' Exhibit L-2.

(The exhibit referred to was received in evidence and marked as Joint Distributors' Exhibit L-2.)

Mr. Corinblit: It is stipulated, is it, counsel, that this document was a part of Exhibit 45-K?

Mr. Westbrook: Correct.

Q. (By Mr. Mitchell): Now, you showed this list of theatres to the distributors in New York when you went to see them with Mr. Simon, isn't that true?

A. No. I don't remember whether I showed it to them. I don't know whether it was made up at that time or not.

Q. You don't remember whether you showed it to them or not? A. No. [1678]

* * * * *

(Testimony of Alex Schreiber.)

Q. (By Mr. Mitchell): You understand, Mr. Schreiber, Cabart is another company with which Marco is associated?

A. Yes, I heard that.

Mr. Mitchell: Rio, 1,000 capacity, 21 days, Cabart.

Alto, 1,000 capacity, 21 days, Cabart.

Mr. Corinblit: Your Honor, I don't mean to interrupt, but I wonder whether this would be an appropriate time to offer the remaining part of the document.

Mr. Mitchell: I would prefer to go forward.

The Court: I think you better wait.

Mr. Corinblit: All right.

* * * * *

Q. (By Mr. Mitchell): When you talked with these distributors in New York, Mr. Schreiber, you did show them this little map of the area which is now in evidence as Exhibit Paramount B-4, correct? Can you see it from there?

A. Oh, yes, I know what you have there.

Q. You showed that to the distributors in New York?

A. I showed it to them and I left them a copy.

Q. The Paradise Theatre is dependent upon automobile traffic to get its patrons to the theatre, isn't that true?

A. A good portion of our business is automobile.

Q. You couldn't stay open without automobile traffic, could you? A. No, we could not.

Q. You have what you consider very good park-

(Testimony of Alex Schreiber.)

ing facilities there, isn't that true? A. It is.

Q. And you use advertising to attract people to your theatre, don't you? A. We sure do.

Q. You did a lot of radio advertising, didn't you? A. When we first opened, we did.

Q. You had advertisements put over the air on KWFC, KFDC and KFBD?

A. I don't remember the stations, but we did have radio advertising over several stations.

Q. Trying to get people to come into your theatre?

A. That is the purpose of the radio advertising.

Q. You expected them to come in by automobile, didn't you?

A. Or foot traffic, anyway they saw fit, as long as they came to the theatre.

Q. You expect most of them to come by automobile, [1681] don't you?

A. Not necessarily.

Q. Well, you expected some of them to come by automobile, certainly?

A. We expected to get full houses by radio advertising and newspaper advertising and we weren't particular whether they came by automobile or on foot.

Q. Or where they came from?

A. That is correct.

Q. You also advertised in the Inglewood newspapers, didn't you?

A. We advertised in the Inglewood newspaper when there was no newspaper in Westchester.

(Testimony of Alex Schreiber.)

There was one little paper in Westchester that was just getting started, so the only paper we could have really advertised in was the Inglewood, because the Inglewood paper had one of their largest circulations in Westchester. They came into Westchester.

Q. It had a pretty large circulation in Inglewood, didn't it?

A. I don't know what they had in Inglewood.

Q. Didn't you suspect there were quite a few in Inglewood that took the Inglewood paper and would see your advertisements?

A. I imagine they did.

Q. You wanted people from Inglewood to come to the [1682] theatre, didn't you?

A. Wanted people from Inglewood, from the entire Los Angeles area to see the beautiful theatre and see the pictures.

Q. Including people from Inglewood, too, you were trying to attract them?

A. Trying to attract people from all over.

Q. I understand that, but you were trying to attract people from Inglewood?

A. They were included.

Q. So that is why you advertised, for one reason, in the Inglewood paper?

A. No, because the Inglewood paper was practically the only paper distributed to the people in Westchester.

Q. So you advertised in the Inglewood paper, not to get people in Inglewood, but people in Westchester, is that it?

(Testimony of Alex Schreiber.)

A. That is what we were interested in, Westchester people.

Q. Weren't you interested in the Inglewood people?

A. We would not refuse their money. We would not tell them they were restricted from coming into the theatre.

Q. Yesterday I asked you these two questions and you answered, and I want to ask one more. This is at page 1636:

"Q. You think a theatre on a 7 day availability in Westchester could perhaps get a gross [1683] of some four to six thousand dollars on a 7 day run, isn't that right? "A. Yes, sir.

"Q. And on the other hand, on a 21 day run, it could only gross say from \$1800 to \$2400?

"A. And even less than that.

"Q. And even less?

"A. That's right."

Then I now want to ask you, so that there are about \$2,000 to \$4,000 worth of admissions in Westchester that leave the Westchester area to see the prior 7 day run in the event Westchester is only playing 21 days, right?

Mr. Corinblit: Where?

Mr. Mitchell: Will you let me ask the question? I am asking him the question.

The Witness: Read my answer.

Mr. Mitchell: Well, I will read it. You don't want to answer that question now?

(Testimony of Alex Schreiber.)

The Witness: Yes, but I think I answered it yesterday.

Q. (By Mr. Mitchell): What is your answer now? A. It is impossible.

Mr. Mitchell: I would like to read from the witness' deposition then, your Honor.

The Court: All right. [1684]

Mr. Mitchell: You will stipulate, I suppose, he gave the answer in the deposition?

Mr. Corinblit: Yes.

Mr. Mitchell: Page 529, line 17 to 23, this is the witness' statement:

"A. Where we played pictures on 21 day and took in \$1,800 to \$2,400 on a 21 or 28 or 35 day run, we would have had that same picture on a 7 day run, we may have taken in from \$4,000 to \$600 on the picture"——

The Witness: \$600?

Mr. Mitchell: "——\$6,000 on the picture. I will subtract the two and you will get an idea in dollars and cents how many left the Westchester area to see the picture." [1685]

Q. Now, with respect to your attempts to get product from Paradise——

A. What is the question? Are you through with that then?

Q. I will be sworn if you want me to.

The Court: You just answer the questions and don't ask questions. Your duty is to answer and not to ask questions.

(Testimony of Alex Schreiber.)

The Witness: I didn't know whether he was finished with that subject.

Q. (By Mr. Mitchell): I am returning to Paradise and let us go back to April 12, 1950, when you met with Mr. Smith and Mr. Taylor at the Paramount exchange and asked for first run Los Angeles day and date. Well, I guess you didn't say—you just wanted first run.

Did you say how you wanted to play it—who you wanted to play with.

A. Nonexclusive first run.

Q. You didn't care who you played with just so long as you got first run? A. That is right.

Q. And that is what you told them?

A. That is right.

Q. And they told you that they had a franchise with Fanchon & Marco, didn't they?

A. They did. [1686]

Q. And you knew that to be Marco Wolff's company? A. That is correct.

Q. And they told you that under that franchise they had to give clearance to Fanchon & Marco of seven days over all suburban towns and 21 days over all theatres in the City of Los Angeles, right?

A. I don't remember if we discussed the clearance, Mr. Mitchell.

Q. Well, they told you that under the franchise they couldn't give you a first run.

A. Day and date with those two theatres.

Q. And told you they were committed to Marco Wolff and his company? A. That is correct.

(Testimony of Alex Schreiber.)

Q. For their pictures? A. That is correct.

Q. What they told you was that the franchise was exclusive, isn't that true?

A. That is right, and nobody else could get first-run pictures from Paramount.

Q. All right. Now, you later on entered into a contract with Marco Wolff so that he could buy and book pictures for your Paradise Theatre, didn't you? A. That is correct.

Q. I will show you a contract dated August 16, 1950, [1687] between Paradise Theatre Building Corporation, Southside Theatres and Alex Schreiber, and ask you if that is the contract which you refer to.

(Document handed to the witness.)

The Witness: Without reading the seven or eight pages I think this is the contract.

Q. (By Mr. Mitchell): Well, I am sure it is. I represent to you that it is. A. Yes.

Mr. Corinblit: This is a photostatic copy of the exhibit we marked.

Mr. Westbrook: Photostatic copy of the original with the signatures appended.

Mr. Corinblit: All right.

Q. (By Mr. Mitchell): You are satisfied those are the correct signatures?

A. Yes, there is no question about that.

Q. The signatures of the other officers.

Mr. Mitchell: I will offer the contract in evidence, your Honor.

The Court: It may be received in evidence.

(Testimony of Alex Schreiber.)

The Clerk: Joint Distributors' Exhibit C-3.

(The document referred to was received in evidence and marked as Joint Distributors' Exhibit C-3.)

Mr. Mitchell: Now, I would like to read a portion of [1688] this to the jury, your Honor, the pertinent portions.

The Court: You may do so.

Mr. Mitchell: This is the document which you and Marco Wolff and other officers signed. I am reading from page 3, the opening part of paragraph C:

"The owners of Southside Theatre Corporation are all related and are members of the Wolff family and they together own all of the stock of the said Southside Corporation.

"These stockholders are also stockholders in Fan-
chon & Marco, Inc., a California corporation, which operates many motion picture theatres, including the Paramount Theatre on the corner of 6th and Hill Streets in downtown Los Angeles, and the Paramount Hollywood Theatre at 6838 Hollywood Boulevard. And also the Baldwin Theatre at 3714 South La Brea.

"The two Paramount Theatres mentioned are operating on franchises originally made by Paramount Pictures, Inc. for the exclusive first run day and date of Paramount pictures."

Q. (By Mr. Mitchell): So that you understood in 1950 the run was exclusive—that is what they told you, isn't it? A. Yes.

(Testimony of Alex Schreiber.)

Q. That was Mr. Smith and Mr. Taylor [1689] who told you that and that is what Marco told you?

A. That is right.

Q. Now, you talked about the dispute between Paramount and Marco about the validity of that franchise, didn't you? A. With——

Q. Smith and Taylor.

A. Taylor and Smith, yes.

Q. And they told you that there was litigation pending to determine whether or not the contract, the franchise was valid? A. That is correct.

Q. And they told you during that litigation they had a stand-by agreement under which they were going to continue to serve pictures to Marco Wolff at the Paramount Downtown and the Paramount Hollywood Theatres? A. That is correct.

Q. And only to those theatres they told you?

A. That is what they told me.

Q. That is right. And they told you that if they were able to consider licensing additional first-run theatres there were a lot of other theatres in addition to Paradise, that would have to be considered in determining what to do, didn't they?

A. I believe they said something along those lines.

Q. They told you the La Tijera had asked for first run, [1690] didn't they?

A. That is right.

Q. And that the Picwood had?

A. No, I don't think they mentioned the Pic-

(Testimony of Alex Schreiber.)

wood wanting first run in those days, because Picwood, I think, had a 21-day and they had to sue to get a better run.

Q. Whatever may be the fact, I am asking what they told you. You say they didn't tell you that Piewood wanted first run. A. I don't think so.

Q. Did they tell you the Crown in Pasadena wanted first run? A. They may have.

Q. Did they tell you that the Baldwin—that Marco Wolff for the Baldwin and Marco Wolff for the Manchester and Marco Wolff for the Southside had also asked for first run?

A. I don't believe they mentioned the Southside, but I am sure they mentioned the Baldwin.

Q. They told you in any attempt to give first run to the suburban theatres that they just couldn't pick Paradise out of the clear—they would have to consider what was going to happen with respect to all the similarly situated theatres, didn't they?

A. They said that—they said that, but I told them they didn't do that in the case of the Loyola.

Q. Well, you told them they didn't do it in the case of the Loyola and that was the two pictures that Paramount had over five years licensed to the Loyola? [1692]

A. At that time it wasn't five years. And I told them that whatever they gave the Loyola we would like to have the same courtesy extended to the Paradise.

Q. I see. You mean whenever there was a pic-

(Testimony of Alex Schreiber.)

ture that for one reason or another they couldn't play in the Paramount you would like to have that consideration?

A. No. I told them I would like to have the consideration of the two or three or one picture at that time, that had played from their exchange, from Paramount, had played in the Loyola Theatre. We would like to have the same privilege they gave to the Fox-West Coast Theatres given to the Paradise. We would like the same consideration and we had a bigger house and a newer house that was to be built.

Q. All right. Now, during the time of your operation from August 1950 to September 1951 Paramount didn't play any of its pictures in the Loyola, did it?

A. Mr. Mitchell, we were talking, weren't we, about April 12, 1950?

The Court: Just answer the question. The question is certainly intelligible. Read the question to the witness, Mr. Reporter.

(Question read.)

The Witness: No.

Q. (By Mr. Mitchell): And they didn't play any of their pictures in your theatre? [1693]

A. No, they did not.

Q. And they didn't play any of their pictures first run in any theatre during that time except the Paramount Downtown and Paramount Hollywood, is that right? A. I believe that is right.

(Testimony of Alex Schreiber.)

Q. They told you then that they were going to offer in that area, the Inglewood-Westchester area two 7-day runs and two 14-day runs, isn't that true?

A. Yes, I believe they either said they were going to or they were.

Q. Yes. I think they probably told you they were offering those two. They told you that a lot of new theatres had come into that area and had created quite a problem to solve, didn't they?

A. Well, words along that line, yes.

Q. And that they were attempting to try to set up a plan that would enable them in an orderly manner to serve the many new theatres and the several old theatres that were in that area. Didn't they tell you that?

A. That is correct.

Q. Did you talk to them again after June 1950, after they set up a second plan?

A. I may have, I may have.

Q. At the time you talked in April 1950 they had a plan where they had some sort of a line, a line dividing this [1694] area into two parts?

A. Yes.

Q. And then you talked with them after they revised that plan and instituted their plan of small areas of priority of availability?

A. I don't know whether I talked to them or not, Mr. Mitchell, or Marco Wolff or my son, but they changed the plan because they claimed the important exhibitors in the area objected to the original plan, so they were going to try another plan.

(Testimony of Alex Schreiber.)

Q. All right. And did they try another plan?

A. Yes, they changed the first one to—I think the second one is still operating and in use.

Q. They talked about a problem that they referred to as the leap-frog problem, didn't they?

A. That is right.

Q. They told you that if the Paradise were to win a bid that it should have priority of availability over the La Tijera, didn't they?

A. Yes.

Q. That is what they thought?

A. Yes. If the Paradise won the picture they would have clearance over the La Tijera and the theatres, some of the theatres in Inglewood and a theatre got the other 7 days in Inglewood. They would overlap the next theatre. It was a [1695] leap-frog arrangement that extended from the Paradise to the Southside Theatre or the Academy and the Southside or the Academy only.

Q. They told you that they thought that the La Tijera Theatre would draw people from Westchester and also from the easterly portion of Inglewood, didn't they tell you that?

A. Well, they said——

Q. I don't mean the easterly portion. I mean the westerly portion of Inglewood.

A. Yes. They mentioned that they thought that we were in competition and would draw people from one another.

Q. They thought the La Tijera would draw

(Testimony of Alex Schreiber.)

people from over in Westchester and draw people from Inglewood? A. That is correct.

Q. And they told you that they thought, for instance, the Fox or United Artists Theatre in downtown Inglewood would draw people from the same area as the La Tijera drew from?

A. That is right.

Q. And then they told you that they thought the Academy and the Fifth Avenue would draw people from the west—some of the people that would be attending the United Artists or the Fox and also from the east, didn't they?

A. And also from the Paradise.

Q. Well, under what they were talking about they were going to let the Paradise run free and clear of the Academy [1696] and Fifth Avenue, isn't that correct?

A. No. They wanted clearance.

Q. You didn't understand that?

A. That was a leap-frog clearance.

Q. You didn't understand that—you didn't understand it the way I said it? A. Well—

Q. That you could run day and date with the Academy? A. If it was possible, yes.

Q. Well, it would be possible if you would bid the second most, wouldn't it?

A. No. If Fox West Coast would permit it we could, yes.

Q. Whether Fox West Coast—you didn't understand that whether Fox West Coast permitted it

(Testimony of Alex Schreiber.)

or not—you understood under the Paramount plan that you could play day and date with the Academy if you would make the second highest bid?

A. No, we couldn't do it if we made the first highest bid. [1697]

Q. All right, and they also told you that the Academy and the Fifth Avenue would be drawing somewhat from the same area as the Southside, didn't they?

A. No. They said that the Southside and the Academy don't draw from one another.

Q. And they told you, also, that the Academy and the Fifth Avenue would draw somewhat from the same area as the Imperial and the Rio, right?

A. I don't remember that, Mr. Mitchell.

Q. Didn't they tell you that in this area the giving of a prior run to one theatre would affect the drawing power of other theatres?

A. I don't think they used it in that term, but that is about what they meant.

Q. That is what they meant, isn't it?

A. They meant that, yes, sir.

Q. And that like a ten-pin, that is in a bowling game, you understand about bowling, if you do it to one, that affects another, and that affects another, and so from one side of Inglewood to the other, it would have an effect, isn't that about what it was?

A. But if you want to make a comparison of a bowling game, the ball goes in the gutter, too, and doesn't hit the pins. [1698]

* * * * *

(Testimony of Alex Schreiber.)

Mr. Mitchell: May we have Paramount's Exhibit C-3?

Q. (By Mr. Mitchell): Mr. Schreiber, I want to show you Paramount's Exhibit C-3, which is a letter dated August 31, 1950, from Mr. Taylor of Paramount to you and ask you if you received that letter from Mr. Taylor. A. Yes, I did.

Mr. Mitchell: I will offer the letter in evidence, your Honor.

Mr. Corinblit: No objection.

The Court: It may be received in evidence.

The Clerk: Paramount's Exhibit C-3. [1699]

(The exhibit referred to was received in evidence and marked as Paramount's Exhibit C-3.)

Mr. Mitchell: I would like to read this letter to the jury.

The Court: All right.

Mr. Mitchell: This is a letter on the letterhead of Paramount Film Distributing Corporation dated August 31, 1950, addressed to Mr. Alex Schreiber, Southside Theatres, Inc., 6838 Hollywood Boulevard, Hollywood 28, California.

Q. 6838 Hollywood Boulevard was Marco's address, correct? A. Yes. It was not my office.

Q. It was his office in the Hollywood Paramount Theatre? A. That is correct.

Q. Where Marco had his headquarters?

A. That is where he was buying and booking the pictures for the Paradise from. [1700]

* * * * *

(Testimony of Alex Schreiber.)

Q. (By Mr. Mitchell): Now, with respect to this paragraph where he suggests that if you have a more feasible plan that would be fair and equal to all of the exhibitors, to present it to him.

You didn't try to present any such plan to him, did you?

A. No. We were interested in operating our Paradise Theatre and getting pictures.

Q. You didn't care about what happened to the other theatres.

A. No matter what plan we would suggest or what we said to Paramount they would still do what they wanted to do, so there would be no sense in suggesting a plan.

Our plan was, if I am not mistaken, to try to let us play day and date with the Fox house, with the United Artists house, with the La Tijera, to try to experiment with it, but that was our suggestion, but they paid no attention to it.

Now, to put it in writing or any other way would just be lost time and lost effort. [1704]

We asked them to experiment, to try it, let us play with the Fox house, let us play them, but they wouldn't let us.

Q. In your view, Mr. Schreiber, you were anxious to get something for the Paradise, weren't you?

A. That is why we built the theatre, Mr. Mitchell.

Q. And you didn't care about what happened to these other theatres.

(Testimony of Alex Schreiber.)

Mr. Corinblit: I object to the question as being argumentative.

The Court: Sustained.

Q. (By Mr. Mitchell): Under the Paramount plan, Mr. Schreiber, assuming the Academy got the bid, you could play if you got the—if you put in the second highest bid, you could play day and date with the Academy. You knew that, didn't you?

A. That was supposed to be the meaning of the letter, but——

Q. That is what they told you, isn't it?

A. I think that is the interpretation of the letter, but it never happened I don't believe. I think we had one picture, but not with the Academy.

Q. All right. So that you recognized that the Academy was a very good grossing theatre. You knew that?

A. Yes, sure. It is a very profitable theatre. It [1705] was a Fox house and it was very profitable.

Q. And it is a very fine theatre, isn't it?

A. Yes, sir. The same architect that built our theatre built that theatre.

Q. Maybe it is as good a theatre as your theatre.

A. It is possible.

Q. Or even better.

A. Might be in the opinion of some people.

Q. Now, let us suppose under this Paramount plan of offering two seven-day runs in the Inglewood-Westchester area, let us suppose the Paramount makes the—the Academy makes the highest bid and Paramount awards that bid to the Academy,

(Testimony of Alex Schreiber.)

now the only other theatres in the area under the Paramount plan that can play the picture are the Southside and the Paradise. Didn't you know that?

A. No. I believe the La Tijera could if they let them.

Q. Then you didn't understand that only the Southside and the Paradise could play day and date with the Academy.

A. The Southside, the Paradise and the Academy?

Q. Now, just a minute. Either of—they have two runs. A. Two seven-day runs.

Q. The Academy gets one.

A. That is right, they get one. That is right, they get one. [1706]

Q. They got one if they bid the highest. Let us assume they bid the highest and got one run.

A. Yes, all right.

Q. Now, that leaves one more Paramount run.

A. That is right.

Q. On seven days. A. That is right.

Q. Didn't you understand the only theatres Paramount would play that second seven-day run in would be either the Southside or the Paradise? Didn't you understand that?

A. No. I believe the La Tijera could have played the second seven-day run if they had the second highest bid.

Q. Well, I think if you will look at—I am now reading again from Plaintiff's Exhibit P-1 or is it

(Testimony of Alex Schreiber.)

1-P-1, which is the letter of June 28, 1950, explaining this plan. It says here:

"If one of the theatres, La Tijera, Fox, United Artists, Academy or Fifth Avenue, makes one of the two best offers it will receive a prior run over all of the other theatres in this group."

Now, that means to you, does it not, as an exhibitor in the business, that if the Academy, which is one of that group, gets the bid it gets a prior run over the La Tijera Theatre, among others? Isn't that what it means to you?

A. That is through the leap-frog method, yes.

Q. Well, whatever you want to call it, if the Academy gets the bid then it gets a priority of run over the La Tijera, right?

A. Yes, I believe that letter indicates that.

Q. Now, you understand that the La Tijera and the Academy can't play day and date.

Mr. Corinblit: Under that letter?

The Witness: Under that letter.

Q. (By Mr. Mitchell): That is the Paramount plan, is it not?

A. The second letter changes it, the August letter changes the June letter.

Q. What letter changes the June letter? Will you show me a letter that changes it?

A. Didn't you just read the second letter of August, Mr. Mitchell?

Q. Yes, I just read an August letter.

A. Isn't that the letter, or is it the other, where the exhibitors in the area have objected, so there-

(Testimony of Alex Schreiber.)

fore they have changed the plan and now are going to release the pictures differently?

Q. I think perhaps you are confused and let us eliminate the confusion.

A. Weren't there two letters, Mr. Mitchell?

The Court: May I ask the witness a question, please? [1708]

Do not try to examine counsel, Mr. Witness. Your job is just to answer the questions. If you don't understand you can say, "I don't understand."

The Witness: Thank you.

Q. (By Mr. Mitchell): Prior to June, 1950, you understood there was a plan whereby Paramount offered two seven-day runs, and two 14-day runs in the area, and they set up their priority of availability on the theory of dividing the area into two parts, with an imaginary line.

Do you remember that? A. That is right.

Q. Now comes June, 1950, this letter which I have just read to you, in which Paramount presents a new plan. Do you remember that?

A. (No response.)

Q. A new plan?

A. I thought the first one you mentioned was the June letter.

Q. No, Mr. Schreiber. A. Well, go ahead.

Q. The June letter presents the plan that has been in effect ever since, a plan under which the La Tijera and the Academy cannot play day and

(Testimony of Alex Schreiber.)

date. That is what you understood that paragraph in the June plan to say, isn't it?

A. No, I don't believe I understood it that way. [1709] They explained the leap-frog clearance.

Q. Now, didn't they tell you under that plan, that if the Academy got the bid it would have priority of run over the La Tijera, the United Artists, the Fox and the Fifth Avenue. Isn't that right? Isn't that what they told you?

A. I believe that is right.

Q. And they also—let me read this paragraph:

"If the Academy or Fifth Avenue makes one of the two best offers that theatre will receive a prior run over the group just above."

And that is the group that we were talking about, the La Tijera, the Fox, the United Artists and the Fifth Avenue.

"They will receive priority of run over that group and also over the Imperial and the Rio."

So that means, does it not, Mr. Schreiber, that if the Academy wins the bid none of these theatres that I am about to name can play day and date with the Academy: La Tijera, the Fox, the United Artists, the Fifth Avenue, the Imperial, and the Rio? A. That is correct. [1710]

Q. That is correct, isn't it? All right. Now, that leaves in the area for the second Paramount 7 day run two theatres, the Paradise and Southside.

A. That's right.

Q. So that all you have to do under the Paramount plan, if the Academy gets the picture, is to

(Testimony of Alex Schreiber.)

put in the second highest bid, bidding against the Southside, that's right, isn't it?

A. If we were required to bid against the Southside.

Q. That's right. Now, Marco is running your theatre and he is running the Southside Theatre.

A. That's right.

Q. Now, if Marco on a picture that the Academy gets, a Paramount picture that the Academy gets, if Marco will put in the highest bid for your theatre, your theatre gets the second Paramount run, right?

A. That's right.

Q. And if Marco puts in the second highest bid for the Southside, his Southside gets the second Paramount 7 day run, right?

A. If he puts in a bid, yes.

The Court: Then it was Marco who decided whether the run would go to the Southside or the Paradise?

The Witness: Well, your Honor, I was thinking that is what Mr. Mitchell was leading up, but that was not the [1711] case. That was not the case.

The Court: Well, Mr. Marco is the one who decided to make the bids. He could make the bids any way he wanted to. He could make the bids so all the Paramount pictures would go to the Southside Theatre, his theatre.

The Witness: Well, I understand Mr. Marco is going to be here, your Honor, so we will let Mr. Marco explain that.

The Court: All right.

(Testimony of Alex Schreiber.)

Q. (By Mr. Mitchell): Now, with respect to Universal pictures, in the business pictures are known as A, B, C, and D pictures, aren't they? Isn't that a common designation?

A. Yes, and double A's and triple A's and percentages.

Q. And nervous A's, is that right?

A. Yes.

Q. And nervous B's, isn't that right?

A. That is correct.

The Court: Mr. Mitchell, I understand the usual meaning of the word nervous, but I never heard it applied to a motion picture before. Will you tell me what you mean by nervous?

Mr. Mitchell: I am sure the witness can tell you. He understands what this is.

The Court: I know, but you are talking to the jury over here.

Mr. Mitchell: I am going to have him tell them, because [1712] I think he and I understand what nervous A pictures are.

Q. Will you tell me what an A, B, C, and D picture is and what you mean by nervous A and nervous B?

A. Years ago they used to sell pictures on an average. They used to figure, a theatre could figure that if they took in a thousand dollars a week, they figured to be successful, if they paid a maximum of 25 per cent for their entire film program. Then they could have a profitable theatre. Of course, at that time the distributors claimed the exhibitors

(Testimony of Alex Schreiber.)

were robbing them, that they should pay 35 per cent for their program.

Q. Let's get down to defining A, B, and C pictures. The history of the motion picture industry is long and it is fascinating, but we don't have time this summer to go into that.

A. It has changed considerable from the way the distributors used to sell pictures. They used to sell you so many A pictures, which were the top pictures. Let's say a theatre made a thousand dollars a week receipts. They would sell them four A pictures at \$100, and they would sell them four B pictures for \$75.

Q. Rather than what they do, will you tell me what an A picture is?

A. An A picture is the top price. If you are going to pay \$100 for it, it is the top picture that is expected to [1713] draw, a big picture.

Q. That is the best picture?

A. That's right.

Q. That is the best type. What is a B?

A. The B in the mind of the distributor is the next group that they think will draw a little less, so, therefore, you pay a little less for the picture. And the same way with the C.

Q. What is a C picture?

A. A little less than the B picture.

Q. You are getting down pretty low when you get to the C, aren't you?

A. That is the way they started, but then they changed to the C to the B and put the B into the

(Testimony of Alex Schreiber.)

A, and then they took the A's and made them double A's, and they took the B pictures and moved them into the A's, and then to the AA's and the AAA's, and then they added to that percentage, and you always got the percentage pictures, and you always got the triple A's and the double A's, but you never got an A or a B, so instead of what your average was supposed to be, \$80 a feature, you were now up to 160.

Before where they wouldn't have any bidding, where a theatre used to pay for an A picture \$100, today he is paying \$500 and \$600, because the distributor has made him bid against theatres that are not in substantial competition with [1714] him, so there you have got your step-up.

The Court: I am trying to find out——

The Witness: About the nervous pictures?

The Court: This word nervous. Is that the attitude the exhibitor took?

The Witness: The nervous picture, your Honor, is when the distributor tells him he has got a world beater, one that is going to break all house records, literally speaking, they are going to be standing outside in the streets, and you got to pay \$1,000 for that because it is going to break your house records, and so-and-so paid two million or four million for the picture, like Carousel. One of those pictures where you spend a million dollars, and they get them so they give 50 per cent, and a thousand dollars or two thousand dollars guarantee, and pay so much for the advertising campaign. They tell them

(Testimony of Alex Schreiber.)

everything under the sun, how they spent money for magazine advertising.

So he falls for the story and—well, he is nervous until he gets through playing the picture.

Q. (By Mr. Mitchell): A nervous A is one that you figure isn't going to quite become an A?

A. It is a picture he overpays for, because you couldn't get it unless you bid.

Q. So far as Universal pictures are concerned, in 1950 and 1951, the great majority of them were C, D, and E [1715] pictures, isn't that right?

A. They may have had a little more to—did you start with C or D?

Q. I said a great majority of them were C, D, and E pictures.

A. Well, they—well, I don't think they had E pictures, because today they don't sell no E pictures. That is unheard of. But they may have had a little more than Paramount, Warner Bros., Fox or Metro.

The Court: You mean to say they still make E pictures, but they call them B, a different designation?

The Witness: Yes, sir, you are right.

Q. (By Mr. Mitchell): I would like to read to you from your deposition. I am sure you haven't changed your mind since you gave it on February 13, 1956. There is no question but what this given was given?

Mr. Corinblit: Page what?

Mr. Mitchell: Page 839, lines 4 to 9.

(Testimony of Alex Schreiber.)

“Q. In your opinion are all Universal pictures C, D, and E pictures?

“A. At that time I would say a great majority of them were.

“Q. That is during 1950 and 1951?

“A. During the last 10 years.”

Mr. Corinblit: Will you go on, counsel, to the next [1716] question and the next answer?

Mr. Mitchell: “Q. In other words, you didn’t really regard Universal product as suitable for exhibition at the Paradise Theatre?

“A. Yes. We would be tickled to death to get it.”

Do you want more?

Mr. Corinblit: That’s enough.

Mr. Mitchell: Fine.

Q. Universal offered you a 7 day availability on a bid, didn’t it, during this period from the time you were open until September 1951?

A. I believe they did.

Q. And during the time that Marco was running the theatre, he made some bids? A. He did.

Q. And got at least one picture?

A. He got one picture? Is that the question?

Q. Do you remember playing Desert Hawk?

A. Yes, our second week we opened.

Q. But after Marco left, why, you wouldn’t make any bids, is that right?

A. After he left?

Q. Yes, after he left your employ.

A. I don’t believe Marco bid all the pictures

(Testimony of Alex Schreiber.)

from [1717] Universal while he was there. He may have, but I don't believe so.

Q. He just bid some pictures, but after Marco left, the Paradise wouldn't bid for any Universal pictures, isn't that right?

A. I don't remember if that is after Marco left. I believe even while Marco was booking the house, I think there were a lot of pictures he did not bid. He wanted to negotiate, and I think the pictures he did bid, I think he put in there no clearance over any theatres, if you will try to locate the letter.

Q. All right. I didn't ask you about that. I was just asking you whether after the time that Marco left—let us establish a date, commencing January 1, 1951, thereafter Paradise didn't make any bids for Universal pictures, is that right?

A. I don't believe they did. Mr. Lehman was handling the buying and booking after Marco, and I believe he was trying to negotiate the pictures.

Q. And not bid?

A. Not bid. He was trying to negotiate.

Q. All right. Now, let us talk about Warner pictures. When you went in to see Mr. Herbel—

A. Pardon me, Mr. Mitchell. Well, I can't ask you a question. Go ahead.

Q. After court. On March 30, 1950, you went to see Mr. Herbel at Warner Bros.?

A. In March, 1950?

Q. That is right.

A. Yes, I believe that is the time.

Q. Mr. Greenberg also was there?

(Testimony of Alex Schreiber.)

A. Yes, he was.

Q. Mr. Herbel is now deceased?

A. That is correct.

Q. And you and Mr. Herbel and Mr. Greenberg for Warner Pictures—you asked those gentlemen for Warner [1719] Bros. first run Los Angeles?

A. That is right. I believe my son was there also.

Q. I see. And they told you that Warner Bros. owned three theatres or perhaps you already knew that?

A. Yes, I knew it and they told me so.

Q. The Warner Hollywood, the Warner Downtown and the Warner Wiltern, right?

A. That is right.

Q. And they said that they wanted to play their pictures in their own theatres, didn't they?

A. Well, words to that effect.

Q. And that they were going to play the pictures in their own theatres?

A. That is right. I think those were the words.

Q. And weren't going to play them in any other theatres?

A. That is correct.

Q. They told you that that enabled them to exploit their pictures first run in the way that they desired to do so without any interference from anybody else?

A. Well, I don't believe they mentioned they were going to exploit the pictures. They just said they were going to play their pictures in their own theatres.

(Testimony of Alex Schreiber.)

Q. They told you those theatres needed the pictures?

A. We didn't discuss whether they needed them or not. They just told me they were going to play their pictures in [1720] their theatres and nobody else could have them.

Q. And they told you they didn't propose to dilute their receipts at their theatres by having some other theatre playing day and date with them? Didn't they tell you that?

A. No, they didn't use those terms.

Q. Isn't that in substance what they said?

A. Yes, in substance that is what it would mean, but you said it different than they did.

Q. All right. Now, at that time they told you that with respect to 7-day runs they were offering those by what they called "competitive negotiations," didn't they? A. Or bidding.

Q. No. Didn't they use the words "competitive negotiations?"

A. They may have or they may have used the word "bidding." We were in there a half hour. They may have used both expressions.

Q. Well, perhaps you didn't know, but at the time you opened your theatre in August, 1950, Warner was not sending out bid requests but on the other hand was simply taking over the telephone offers for pictures, isn't that right?

A. I don't know how they were doing it.

Q. You don't know how they were doing it. If you [1721] don't know, then don't try to tell us.

(Testimony of Alex Schreiber.)

A. Okay. I mean, I don't know if they were doing it on the telephone or having their salesmen go over and visit the exhibitor or the salesmen go to the Fox office and negotiate with them at the Fox office. I don't know how they did it. I wasn't interested in how they sold their pictures.

Q. Well, you were interested in getting some Warner 7-day runs?

A. Yes, but I wasn't interested in how they were selling the other theatres in Los Angeles or the State of California.

Q. You were mighty interested in how they were selling the theatres in Inglewood and the Westchester area?

A. I surely was. Especially I wanted pictures for the Paradise. That is why we built the theatre. We had to have pictures.

Q. Now, in wanting pictures for the Paradise, you knew that when you opened the theatre Warner was offering pictures by what they called "competitive negotiations" and by that I mean that either over the telephone or by personal visits salesmen would talk with exhibitors in the Inglewood-Westchester area and ask them for offers and find out who would give the best offer and give the picture to him. Didn't you know that is the way they were doing their business?

A. I don't know how they were doing business with [1722] somebody else, Mr. Mitchell.

Q. They were coming to you and asking you for an offer?

(Testimony of Alex Schreiber.)

A. Well, if you want to use the word "you," they were negotiating with Marco Wolff.

Q. But they were negotiating?

A. Marco Wolff.

Q. And they called that negotiating "competitive negotiations," didn't they, in their conversations with you?

A. I had no conversations with them, Mr. Mitchell.

Q. Well, you had a conversation with Mr. Herbel and Mr. Greenberg?

Mr. Corinblit: That is in March of 1950, counsel. Now, don't confuse the dates.

Q. (By Mr. Mitchell): You had a conversation with Mr. Herbel and Mr. Greenberg in March of 1950? A. I did, yes, with my son.

Q. And they told you they were offering their pictures by competitive negotiation?

A. They may have used those words.

Q. And after the theatre opened, they continued to offer their pictures by competitive negotiations for a period of time, didn't they?

A. I don't remember. I believe at the time they told me that, as you said, they were competitive negotiations. [1723] That was the period of time that they had a set deal whereby the La Tijera and the Imperial were getting their pictures without bidding and the other theatres were not negotiating. The only theatres that were negotiating were the La Tijera and the Imperial, if I am not mistaken.

(Testimony of Alex Schreiber.)

Q. Now, on September 1, 1950, Warners began sending requests for bids to you. Do you remember that? A. September, 1950?

Q. Yes, shortly after you opened?

A. They may have.

Q. And they continued that until May, 1951?

A. They may have.

Q. And then they went back to competitive negotiation again, is that right? A. In 1951?

Q. Yes, 1951, in May. Do you remember that?

A. No, I don't remember the dates. I do remember what they did on the third picture.

Q. Well, Warner Bros. licensed you the first two pictures which you played in your theatre, isn't that true?

A. The first three pictures were given to Marco Wolff as an experiment that we talked about, to try out the house, the first three pictures.

Q. You opened with a Warner picture, didn't you? A. Yes, *Pretty Baby*. [1724]

Q. And the second picture you had was a Warner picture?

A. Not the second week but the second Warner picture, yes.

Q. I am sorry. Your second picture was a Universal, and your third picture was a Warner picture? A. That is correct, the third week.

Q. Mr. Herbel had agreed to give you two 7-day pictures, hadn't he? A. No.

Q. Well, let me see if I can refresh your recollection. If you would look at the deposition given

(Testimony of Alex Schreiber.)

by your son Max on April 9, 1956, commencing at page 66, and ending at page 68. If you would read that, please, I think that may refresh your recollection.

A. This is my son's?

Q. Yes. A. All right, Mr. Mitchell.

Q. Does that refresh your recollection that Mr. Herbel agreed to give the Paradise two pictures on a 7-day run? A. Well, this——

Q. You can answer that "Yes" or "No."

A. No, it does not.

Q. It does not refresh your recollection? [1725]

A. No, because Mr. Marco Wolff told me he was to get three pictures.

Q. You weren't present at the arrangement with Mr. Herbel at all then?

A. No, I was not. I was not.

Q. But you do know he agreed to give you some pictures on a 7-day availability?

A. Marco told me that he made arrangements with Mr. Herbel to get three 7-day pictures to get the theatre opened because in here, Mr. Mitchell——

Q. Well——

A. You asked me to read this, didn't you?

Q. Let me read it then to the jury. Perhaps that will straighten this out.

A. Okay, please do.

Mr. Mitchell: May I read this, your Honor, from the deposition?

The Court: Yes, you may read it.

(Testimony of Alex Schreiber.)

Mr. Mitchell: This is from the deposition of Max Schreiber, page 66, line 26, to page 68, line 24:

“Q. Now, you mentioned a second conversation with Mr. Herbel which, you said, you believed was a telephone conversation in which you, Marco Wolff, and Mr. Wolff participated. Is that correct?

“A. That’s correct.

“Q. Do you recall when that conversation occurred?

“A. Just prior to the opening of the theatre.

“Q. Was that a conference, or were you and Mr. Wolff together talking to Mr. Herbel or what?

“A. I was at Mr. Wolff’s office at the Hollywood Paramount. Mr. Herbel was at his office on Film Row and they were on the telephone and I was on the extension phone.

“Q. So you were able to hear both Mr. Herbel and Mr. Wolff? “A. Yes.

“Q. Now, will you tell me what was said by Mr. Wolff and by you and by Mr. Herbel on that occasion, as nearly as you can recall?

“A. Well, we had consummated an arrangement with Mr. Wolff to book and buy pictures for the Paradise Theatre and he was attempting to get us a picture to open the theatre with. The theatre had been completed for some five or six or eight weeks [1727] prior to the opening and we didn’t have any pictures to open with. We wanted to open on an early run and Mr. Wolff asked Mr. Herbel for pictures so we could open the theatre and——

(Testimony of Alex Schreiber.)

"Q. Did he say on what run he wanted the pictures? "A. First run.

"Q. First run Los Angeles?

"A. First run Los Angeles, and Mr. Herbel said he couldn't do that because they had to put their pictures in their theatres first, and I remember Mr. Marco asking him, well, what could he do, what did he suggest. He had to get the theatre open. He had a management arrangement with us and it was putting him in an embarrassing position with us, and Mr. Herbel said, well, in view of their friendship that he would date a picture on the 7th day for us, a picture called Pretty Baby that was going to be available the following week and he would date it and we could go ahead and prepare our ads for the opening of the theatre with that picture as our first picture, and Marco told him that he couldn't run one picture forever.

"There was another picture that was coming up the following week or something and would he date [1728] that, too, and I believe after quite a conversation Mr. Herbel said he would date both of the pictures for us so that we would know we would have pictures for a few weeks to get started in the theatre, and that would be on the 7-day availability, and Mr. Marco thanked him and told him he would see him at the farm on Sunday. They have a farm next to each other in Devonshire, and that was the substance, as I recall, of that conversation."

The Court: Mr. Mitchell, maybe this is a pretty good place to break.

Ladies and gentlemen, we are about to take another recess and again it is my duty to admonish you not to discuss this case with anyone nor permit anyone to discuss it with you. You are not to formulate or express any opinion as to the rights of the parties until the case has been finally submitted to you.

With that admonition we will now recess until 2:00 o'clock.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 2:00 o'clock p.m. of the same date.) [1729]

Friday, July 27, 1956, 2:00 o'clock

The Court: Stipulate the jury is present in the box?

Mr. Mitchell: Yes, sir.

Mr. Corinblit: So stipulated.

The Court: You may proceed.

ALEX SCHREIBER

the witness on the stand at the time of the recess, having been first duly sworn, was examined and testified further as follows:

Cross Examination—(Continued)

Q. (By Mr. Mitchell): Mr. Schreiber, on your judgment of the relative desirability of theatres from a distributor's standpoint, you think the Para-

(Testimony of Alex Schreiber.)

dise is an exceedingly good theatre for distributors to play their pictures in, isn't that true?

A. That is true.

Q. Let's talk about the 7 day run. That is true for the 7 day run? A. Yes, sir.

Q. Do you think your theatre is a better theatre than the Imperial Theatre, let's say?

A. You mean better as far as grossing or in appearance? [1730]

Q. No, as far as grossing.

A. Oh, I think we would have grossed a lot more money than the Imperial Theatre.

Q. How about the Rio?

A. I think we would have grossed a lot more money than the Rio.

Q. How about the Southside?

A. Oh, I believe we would have grossed as much, if not more than the Southside eventually.

Q. And how about the Fifth Avenue?

A. I think we would have grossed more than the Fifth Avenue.

Q. From your concept of substantial competition, you would say, would you not, Mr. Schreiber, that there is no substantial competition between the Academy in Inglewood and the United Artists in Inglewood, isn't that right?

The Court: No substantial competition?

Mr. Mitchell: Yes.

Q. Isn't that what you would say?

A. Just a minute. I am trying to picture the locations now.

(Testimony of Alex Schreiber.)

Q. The Academy on Manchester Boulevard.

A. Yes.

Q. And the United Artists in downtown Inglewood.

A. I would say that there is some competition. Whether [1731] it is substantial or not, I don't know. I would want to give that some thought.

Q. I think you have already thought about it. We will come back to that in a minute. You would say as between the Academy and the Fox Theatre, which is marked on here as the Fox Crest, that there is no substantial competition between those two theatres from your concept of it?

A. There may be because the Fox and United Artists, the first theatre you mentioned, they are across the street from one another.

Mr. Mitchell: I would like to read, your Honor, from Mr. Schreiber's deposition given on February 13, 1956, at page 596, line 11 to line 24.

"Q. Did you have any opinion as to whether the Fox Inglewood and the United Artists were competitive with the Academy?

"A. I have an opinion of that, yes. Whether I expressed it at that time or not, I don't remember.

"Q. Well, is your opinion any different now than it was in 1950?

"A. No, it is still the same.

"Q. What is your opinion?

"A. There is no competition between the Fox, United Artists, and Academy.

"Q. You don't think that they are dependent

(Testimony of Alex Schreiber.)

[1732] upon the same patronage for their attendance? "A. Not substantially, no."

Mr. Corinblit: Would you go on, please, to the next question and answer?

Mr. Mitchell: Yes. I will read just as long as you want me to.

"Q. How substantial is substantially competitive in your judgment and opinion, Mr. Schreiber?

"A. If they were to affect one another to the extent of 1500 or 2,000 a week.

"Q. Anything less than that is not substantial competition?

"A. No, because the film companies get the biggest share of the difference.

"Q. When you mean the film companies get the biggest share of the difference, what do you mean?

"A. The film rentals range anywhere from—well, maybe they don't with the Fox theatres, but they do with the Paradise.

"Q. They range anywhere from what to what?

"A. From 40 to 80 per cent to the film companies."

Any more?

Mr. Corinblit: That is up to you.

Mr. Mitchell: All right. [1733]

Q. On your Paradise Theatre in 1950 to 1951, the house expense of your theatre before cost of administration was \$2,200 a week, isn't that correct?

A. I believe that was our expense in the beginning, right.

Q. What do you mean, in the beginning?

(Testimony of Alex Schreiber.)

A. When we first opened up, the first few months we were open.

Q. The first few months. All right.

The Court: Did that \$2,200 a week include any salary to the officers of the corporation?

The Witness: That includes a salary to my son.

The Court: How much was that?

The Witness: \$20 a week.

The Court: Is that the only officer in the corporation that got any salary out of the \$2,200 a week?

The Witness: That is the only amount of salary paid. My son got \$100 a week, and he charged \$80 to the bowling alley and \$20 of the \$100 to the theatre.

The Court: Did this \$2,200 a week include the bowling alley?

The Witness: Oh, no, absolutely not.

Q. (By Mr. Mitchell): What was there attached to this theatre? There was a bowling alley, and did you have a restaurant there? [1734]

A. There was a coffee shop and the bowling alley.

Q. And a cocktail bar?

A. In the bowling alley.

Q. A cocktail bar there, also? A. Yes, sir.

Q. What else did you have besides that in connection with the theatre?

The Court: I suppose they had some bowling balls and some pins.

(Testimony of Alex Schreiber.)

Q. (By Mr. Mitchell): They always have popcorn and peanuts at the theatre, don't they?

A. I believe we had a nursery there where we had a matron to take care of children while the women were bowling in the day time. [1735]

Q. Now, in addition to this \$2200 a week you had a cost of administration under your arrangement with Marco Wolff of five per cent, didn't you?

A. I believe that was his figure.

The Court: Five per cent of what?

The Witness: Whatever came in to the box office.

The Court: You mean the gross?

The Witness: Yes.

Q. (By Mr. Mitchell): All right. Let us assume a gross of \$3600, and if you have a five per cent cost, you have \$180 a week administration cost, isn't that right?

A. That would be the figure that Mr. Marco Wolff would receive for administration and book-keeping, et cetera.

Q. Now, still assuming that same \$3600, a film rental of 35 per cent in that day and age was reasonable, was it not? A. Yes.

Q. So if you paid a film rental of 35 per cent——

A. Mr. Mitchell, if you don't mind the interruption, there would be a second feature deduction.

Q. Second feature deduction?

A. Before the 35 per cent.

Q. Before the 35 per cent. That is true. So that your second feature would run you around \$200 or \$300? A. Yes. [1736]

(Testimony of Alex Schreiber.)

Q. That would be \$1155 film rental plus your second feature which we assume would cost \$300 or \$1455, is that right? A. Film rental, yes.

Q. Film rental? A. Yes.

Q. All right. On that basis you have a break even point of around——

The Court: Mr. Mitchell, you have house expense of \$2200, and administration expense and film rental. Does the film rental come in on house expense?

Mr. Mitchell: No.

The Witness: That was in addition.

Mr. Mitchell: That was exclusive of cost of administration and exclusive of film rental.

The Court: Then what does house expense include?

The Witness: In our particular case we paid no rent. We owned our own building, so the house expense would include taxes, insurance, interest on the mortgage, salaries, electric lights, water, advertising. It included our auditor, and that runs up to \$2200.

The Court: All right. I wanted to make sure that was understood.

Q. (By Mr. Mitchell): So that means your break even point is somewhere around \$3800?

A. It would be in that case, yes.

The Court: That is for a week?

The Witness: Yes, sir.

Mr. Corinblit: It is based on the \$2200 figure which you will have to consider.

(Testimony of Alex Schreiber.)

The Court: It was a week's expense.

Mr. Corinblit: But that is not the actual house expense. This is just a figure which Mr. Mitchell is using.

The Court: That is what the witness testified to. He said \$2200. He said that at the outset there was a twenty-two hundred dollar figure.

Mr. Mitchell: For the first few months.

Mr. Corinblit: He testified that was at the outset.

The Court: Mr. Corinblit, my understanding is, and I think the jury is justified in coming to the same conclusion, that at the beginning the house expense was \$2200 a week.

Mr. Corinblit: "Beginning" is the key word.

The Witness: Right.

Mr. Mitchell: He may change his testimony now, but he said a few moments ago the first few months.

Mr. Corinblit: We have the profit and loss statements here in court. Mr. Mitchell has the profit and loss statements showing the actual expense for the full year and there is no question about it, but Mr. Mitchell wants to use a different figure. [1738]

The Court: He says the house expense at the beginning was \$2200. I don't know whether he said the first few months or not.

What do you mean when you say "the beginning?"

The Witness: At the beginning, when we opened up.

The Court: For how long?

(Testimony of Alex Schreiber.)

The Witness: I don't know. The reports would show that exactly.

Mr. Mitchell: Let us get his testimony, your Honor. He said for the first few months.

The Witness: It may have been for the first few months. I believe I said——

The Court: All right.

The Witness: When you open up in the beginning you have a lot of advertising, a lot of pre-opening expense that you don't have later on. You go on the radio and you spend a lot of money in the beginning so that, naturally, the auditor can't charge everything to the one week. He may spread it over three weeks or over a four-week period or maybe over a six months period. It is all according to what the money was spent for.

The Court: How long did that run? How many weeks were run to compute the \$2200 a week?

The Witness: I couldn't tell you exactly. You would have to look at the monthly statements of the auditor. I [1739] don't know—whoever has got it.

The Court: Are you limiting "in the beginning" the first week?

The Witness: I think it was longer—longer than the first week.

The Court: Was it longer than three weeks?

The Witness: It may have been.

The Court: Longer than three months?

The Witness: I don't think so, because with the

(Testimony of Alex Schreiber.)

amount of business which we were doing we couldn't continue with that much expense.

Mr. Corinblit: We will be glad to have the P and L statements go in at this time if Mr. Mitchell would like to put them in. They are here and he has copies of them.

The Court: He has a right to have this witness testify and I want to know what this witness meant.

Mr. Corinblit: Yes.

Q. (By Mr. Mitchell): At the last of November, 1950, you were telling Mr. Cohen that you house expenses amounted to \$2200 a week. See if you don't recall that.

(Handing document to the witness.)

A. Yes. This letter is dated November 27th, but that letter also states as of November 7, which was practically three weeks prior to that, which would then include September and October—two months. [1740]

The Court: Then this house expense you say included the payments on the loan or the interest on the loan. What was it? Was it interest on a loan?

The Witness: Yes, sir.

The Court: It didn't include any payments?

The Witness: Oh, no. Uncle Sam doesn't allow you to do that. Plus interest on the equipment that was bought on contract. [1741]

Mr. Mitchell: Do you have Plaintiff's Exhibit 45-J there?

Q. I am going to give you, Mr. Schreiber, Plain-

(Testimony of Alex Schreiber.)

tiff's Exhibit 45-J to have before you, please.

(Handing exhibit to witness.)

Now, you opened your theatre with a Warner picture named *Pretty Baby*, playing at the top half of the double bill, and a Republic picture, *Harbor of Missing Men*, playing at the lower half of the double bill, isn't that correct?

A. That is the opening attraction.

Q. We will just use W for Warner Bros. I am going to use R for Republic. Now, the gross on these pictures was \$1,875, wasn't it?

A. That's right.

Q. And the film rental which you paid Warner Bros. was \$600, right? A. That is correct.

Q. So that on those two pictures you didn't make your break-even point, did you?

A. No, we did not.

Q. The second picture you played was a Universal picture named *Desert Hawk*, wasn't it?

A. Yes, sir. But, Mr. Mitchell, you forgot to put the cost of the second picture that was played with *Pretty Baby*. You have it marked on there but you don't have the film [1742] rental.

Q. Well, that went to Republic. Republic isn't involved here. I am just concerned with what Warner Bros. got out of it.

A. The film rental that they got?

Q. Please, sir. Let's go on to the next. *Desert Hawk* was the second picture you played.

A. That is correct.

Q. That was a Universal picture?

(Testimony of Alex Schreiber.)

A. That is correct.

Q. I will mark that U. You held with that on the lower half of the double bill *Pretty Baby*, correct?

A. Yes. We couldn't get another picture.

The Court: You mean to say you couldn't get a picture of any kind?

The Witness: We couldn't get a picture that was suitable to play for the second week so we were compelled to hold the first week's picture over so we could have a picture the second week.

The Court: You couldn't get a picture that was three or four years old?

The Witness: Oh, yes, we could have got one three or four years old, yes, but when we open a practically \$500,000 building, a beautiful theatre, a fine theatre, we couldn't book a three- or four-year old picture. [1743]

The Court: Then when you say you couldn't get any picture, you weren't stating exactly the fact, were you? You could have got some picture.

The Witness: I apologize. We could have got some picture, yes.

The Court: But you couldn't get a picture you thought was suitable?

The Witness: That is correct.

Q. (By Mr. Mitchell): You could have got plenty of pictures at a 21 day availability?

A. I don't think so, not plenty.

Q. You didn't try?

A. I didn't try, no, because I was not booking

(Testimony of Alex Schreiber.)

the house. You would have to ask Mr. Wolff that, Mr. Mitchell.

Q. So far as this bill with Desert Hawk at the top of the bill, a Universal picture, you grossed \$2,139, didn't you? A. That is correct.

Q. You paid Universal a film rental of \$661.

A. That is correct.

Q. So that you didn't break even on that, did you? A. No, we did not.

Q. Now, your third picture that you played was Warner Bros.' Kiss Tomorrow Goodbye, along with Treble Trouble, a picture of Monogram's, is that correct? [1744] A. That is correct.

Q. And on that bill you grossed \$1,522, is that right? A. That is correct.

Q. And paid Warner Bros. a film rental of \$542?

A. That is correct.

Q. The dates on which you played that bill were from September 6 to 12, 1950, is that right?

A. That is correct.

Mr. Mitchell: We have here, your Honor, and under stipulation either party can use them, the various cut-off cards, which are recordations of information with respect to various theatres, and I would like to read into evidence from the Warner cut-off card involving the Rio Theatre, the gross and film rental paid by the Rio on this same picture for the same period of time. You can follow here, if you want to.

Mr. Corinblit: That's all right. You can read it. Your Honor, we have no objection to this. We pro-

(Testimony of Alex Schreiber.)

pose to offer all the cut-off cards in evidence, so I am agreeable to this reading.

The Court: That's all right. Let Mr. Mitchell read that into the record if he wants to.

Mr. Corinblit: Yes, sir.

Mr. Mitchell: Reading from Joint Plaintiff and Defendants' Exhibit D-2, marked for identification, I will read into evidence the gross of the Rio on this picture. [1745]

From September 6 to 12, 1950, the gross is \$1,908.39, and the film rental \$1,000.

The Court: Which picture was that, Mr. Mitchell?

The Witness: How much was the gross? [1746]

Mr. Mitchell: This is Kiss Tomorrow Goodbye.

Mr. Corinblit: Mr. Mitchell, before you go on, I would like to check those figures.

Where do you have this \$1000?

Mr. Westbrook: Right there (indicating).

Mr. Corinblit: Well, Mr. Westbrook has pointed out a place where the film rental terms are provided and not the payment.

I will not quarrel with that if we can get the fact verified that \$1000 was paid.

Mr. Mitchell: All right.

Q. Now, the next picture you played was Columbia Film Company's picture named In a Lonely Place along with Warner's Kiss Tomorrow Goodbye?

A. Correct.

Q. Is that correct?

A. Yes, that was another——

(Testimony of Alex Schreiber.)

Q. "Yes," answers it unless you want to say something. I don't know how you can explain that. The answer is "Yes."

A. I want to explain that the second picture with *In a Lonely Place* was held over from the week before because there was another place that we couldn't get a suitable second picture and if I may add that *In a Lonely Place* was one of those nervous pictures. [1747]

Q. Well, these companies can't make a winner every time, you know.

Mr. Corinblit: Mr. Mitchell, I am sorry, but I notice on *Kiss Tomorrow Goodbye* you have read the total film rental paid for the total run of the picture—that is for the next week.

Do you want to do that——

Mr. Westbrook: There is a statement of the gross and if you want the film rental and the gross, all right, but that one played flat rental.

Mr. Corinblit: I think we should have the complete picture.

Mr. Mitchell: I don't mind putting down here anything you want that is a fact. I was trying to show what the film rental was for a week to compare it with this break even point to show what kind of performance this theatre did. If you want to have the flat rentals in there for the second feature, certainly. It is just another figure, however. It does nothing so far as I am concerned to show what the theatre can do.

Mr. Corinblit: I don't want to prevent you from

(Testimony of Alex Schreiber.)

showing anything you want to show but I think you should be complete about the picture the second week it played.

Mr. Mitchell: I will put anything on here that is a fact that you want. What do you want on here?

Mr. Corinblit: Under the Rio. If you will put September 13 to 19, \$150 and that is all I want. That is the rental.

Mr. Mitchell: I don't understand what you are talking about. I am only interested in the one week of the Rio to compare it with the picture at the Paradise.

The Paradise for the picture Kiss Tomorrow Goodbye for one week gets \$1522. The Rio for one week gets \$1908.

I suggest I go ahead and you can write on my exhibit anything you want to.

The Court: Let Mr. Mitchell develop it as he sees fit and if you want to add anything to it or present another chart, you may do so.

Mr. Corinblit: All right, your Honor.

Q. (By Mr. Mitchell): All right. Now, the Columbia picture In a Lonely Place and the holdover of Kiss Tomorrow Goodbye, you grossed \$2125, isn't that right? A. That is correct.

Q. And you paid Columbia \$1500 film rental which was a guarantee that you agreed to pay, correct?

A. Paid them \$1500. I don't know whether it was a guarantee against a percentage or a flat \$1500.

(Testimony of Alex Schreiber.)

Q. All right. Now, I would like to offer in evidence from Joint Plaintiff and Defendants' Exhibit F-2 for identification, the performance of the Southside on this same picture at this same time. [1749]

There was a gross of \$4255 and a film rental of \$1500 which I am offering in evidence from that document.

The Court: It may be received.

The Clerk: Where is the document?

Mr. Corinblit: He is not offering it. He is only reading from it.

The Court: You are not only confusing the witness but you apparently have confused our clerk.

The Clerk: I am not confused.

The Court: You have offered something in evidence and we haven't a document.

Mr. Mitchell: With all my apologies to Mrs. Smith, just so the jury is not confused.

The Court: If you read it in, isn't that sufficient?

Mr. Mitchell: I didn't mean to offer it in evidence. I meant to read it in evidence. I just want to help take Mrs. Smith off of the hook.

The Clerk: I am not on a hook.

The Court: She was mumbling to herself.

The Clerk: No, I wasn't.

Mr. Westbrook: She was mumbling at me, your Honor.

The Court: I didn't know where the mumble was directed.

(Testimony of Alex Schreiber.)

Mr. Mitchell: May I have the cut-off card for the Fifth Avenue.

In order to save time I want to show and I will do so, [1750] your Honor, in a moment, that the Fifth—I will show this by evidence in just a moment, that the Fifth Avenue Theatre a week later after the Paradise and the Southside had been playing this picture for a week, grossed \$2000.

The Court: What rental did they pay?

Mr. Mitchell: I will give it to you in a moment. I have it here in my notes.

Mr. Westbrook: \$437.

Mr. Corinblit: Are you going to produce the cut-off card?

Mr. Westbrook: Yes.

Mr. Mitchell: Do you have the record from which we can—I will pass that until we get the records.

Q. All right. Now, the next picture you played was Warner Bros.' Tea For Two along with a second week of Columbia's A Lonely Place, is that correct? A. That is correct.

Q. And you grossed \$1585 and paid a film rental of \$1500, which was a guarantee, is that correct?

A. I don't know whether it was a guarantee against a percentage of a flat rental of that \$1500.

Q. You paid \$1500?

A. We did pay \$1500, yes.

The Court: May I ask a question?

When you keep these top half of the bill for the

(Testimony of Alex Schreiber.)

second [1751] week, do you pay a flat rate for the second week?

The Witness: We did in this case, yes. The second week they gave us the picture at a flat rental.

The Court: What did you pay the second week, if you paid \$1500 the first week, what did you pay the second week?

The Witness: We paid \$100 for Tea For Two for the second week, and we paid for Kiss Tomorrow Goodbye the second week \$200 and we paid for Pretty Baby the second week \$200. [1752]

Mr. Corinblit: I think we have got the exhibit in evidence. Mr. Schreiber, I will call your attention to the number of days for which you paid the rental.

The Witness: That \$100 for hold-over?

Mr. Corinblit: Yes.

The Witness: Three days.

Mr. Corinblit: All right.

Mr. Mitchell: Now, what do you say the cut-off card shows on the Fifth Avenue?

Mr. Westbrook: The Fifth Avenue?

Mr. Mitchell: On the 14 day availability.

Mr. Westbrook: \$1,892, instead of \$2,000.

Mr. Corinblit: For the gross?

Mr. Westbrook: Yes.

Mr. Corinblit: How much for the film rental?

Mr. Westbrook: 423 instead of 437.

Q. (By Mr. Mitchell): Your next picture is—you are still not making your break-even point, are you?
A. No, sir.

(Testimony of Alex Schreiber.)

Q. Now, the next picture that you played was Columbia's Convicted, along with Columbia's Petty Girl, is that right? A. That is correct.

Q. And on that bill you grossed \$1,327 and paid a film rental of \$530, is that correct?

A. That is correct. [1753]

Q. These are all on 7 day availability, aren't they? A. No, sir.

Q. Well, Convicted is on a 7 day availability.

A. No, sir.

Q. Where do you get that information?

A. From the exhibit you handed me, or Mr. Westbrook handed me.

Q. You say this is a 14 day? A. Yes, sir.

Q. Petty Girl is a 14 day? A. Yes, sir.

Q. Let's go back. Tea For Two is a 7 day, is that right? A. The first week was a 7 day.

Q. You only played it one week, as far as you know?

A. We played it the extra three days.

Q. A Lonely Place was a 7 day, correct?

A. 7 and 14. You have two weeks there, I believe.

Q. The first week you played it was a 7 day. You had another 7 day when you played it as the second half of the double bill.

When you played Kiss Tomorrow Goodbye at the top half of the bill, it was a 7 day picture, is that right?

A. Kiss Tomorrow Goodbye as the top half?

Q. Yes. [1754]

(Testimony of Alex Schreiber.)

A. We did not play *In a Lonely Place* with *Kiss Tomorrow Goodbye* when *Kiss Tomorrow Goodbye* was the top half.

Q. I am sorry. You misunderstood me or I misunderstood you.

A. We played *Treble Trouble*.

Q. Just a minute. Just listen to me a minute. When you played *Kiss Tomorrow Goodbye* at the top half of the double bill, it grossed \$1,522.

A. Yes, sir.

Q. That was on a 7 day availability?

A. Yes, sir.

Q. All right. We are going backwards. When you played *Desert Hawk* and grossed \$2,139, that was on a 7 day? A. Yes, sir.

Q. When you played *Pretty Baby*, the first picture that you played, that was on a 7 day?

A. That is correct.

Q. All right. Now, we are back to these two 14 day availabilities of Columbia.

Mr. Mitchell: I would like to offer in evidence——

The Court: Read it into evidence, Mr. Mitchell, rather than offer it.

Mr. Mitchell: All right. I would like to read into evidence from Plaintiff's and Defendants' Joint Exhibit F-3 again the gross receipts on this picture playing day and [1755] date at the Fifth Avenue. Gross, \$2,317, film rental \$316.

Mr. Westbrook: Oh, that is a mistake. That was a combination program of Columbia and they have

(Testimony of Alex Schreiber.)

recorded the total film rental for two pictures as the film rental of one picture.

Mr. Mitchell: All right. Let's get the comparison correct, then.

Well, on the film rental, Fifth Avenue, the cut-off card shows that it played the same program and the gross for the Fifth Avenue is correct, but when you add in the \$475 for Petty Girl and \$316 for Convicted, or a total of \$791, that is the film rental for the bill compared with 530 at the Paradise.

Mr. Westbrook: Those are comparable figures, counsel, are they not?

Mr. Corinblit: Well, that is what the record shows, \$530. We will check it out.

Q. (By Mr. Mitchell): Now, the next picture that you played was Paramount's Sunset Boulevard. A. That is correct.

Q. No complaint on that picture, have you?

A. No. That was the first A picture we booked in the theatre in seven weeks.

Q. That was a good picture?

A. In seven weeks that is the first picture we got. [1756]

Q. And you played that the first week with Universal's Saddle Tramp, right? A. Correct.

Q. That is not only a good picture, but that was one of the outstanding pictures of the year?

A. What was?

Q. Sunset Boulevard.

A. Oh, yes, that was a very good picture.

(Testimony of Alex Schreiber.)

Q. That is the kind you would like to play all the time?

A. That is the kind the Fox theatre people were playing all the time.

Q. And we will show you in a moment what they did with it, too.

Your film rental the first week, rather, your gross the first week was \$3,489, wasn't it?

A. No. Did you say 34——

Q. Yes. A. No, that is not correct.

Q. I have transposed the figure. \$3,849, right?

A. Yes. That's quite a difference.

Q. So with this top picture of the year, or one of the top pictures of the year, you were able to get \$249 above your break-even point, correct?

A. No. [1757]

Q. All right. The film rental that you paid on the picture for that week was how much?

A. \$1,339.

Mr. Mitchell: I would like to read from the Southside Theatre cut-off card, Paramount, gross \$4,668, film rental \$1,451. [1758]

The Witness: Mr. Mitchell, could I ask you to write a little bigger.

Mr. Mitchell: I will be glad to.

The Witness: Is that \$4668?

Q. (By Mr. Mitchell): You have given us the testimony and I will read it to you, but I mean the point is we are trying to tell the jury and not to have you and I argue. You just answer the questions that I ask.

(Testimony of Alex Schreiber.)

Sunset Boulevard grossed at the Paradise along with Saddle Tramp \$3489? A. \$3800?

Q. \$3849. The Southside grossed \$4668.

Now what other figures do you want?

A. The cost of the film rental of what the Paradise paid for the picture and what the Southside paid for the picture. I can't see that very well.

Q. \$1339 the Paradise for Sunset Boulevard; \$1451 the Southside. A. Okay.

Q. Now, that was on a 7-day availability that you played Sunset Boulevard. That is the first week, right? A. That is correct.

Q. And you went on and played it a second week?

A. And during the second week—just a moment.

Q. For the second week your gross went down to \$2709, [1759] right?

A. Yes. Could I explain something there?

Q. I don't mind, but that is the answer. The answer is "Yes," it went down. Do you want to explain why it went down?

A. No. I want to explain when we played it the second week, the second week of that "A" picture was more than the first week of any one of the other previous weeks because we had an "A" picture.

Q. And the second week of the "A" picture you didn't even reach your break even point. That is right, isn't it?

A. According to what you are calling the break even point.

Q. All right. Now, I would like to run through

(Testimony of Alex Schreiber.)

the rest of your, I believe, with your 7 day pictures.

You played a picture called Born Yesterday on a 7 day availability, didn't you?

A. Yes, March 14th to the 20th.

Q. And that was a Columbia picture, right?

A. Correct.

Q. Starring Judy Holliday?

A. That is correct.

Q. One of the real outstanding pictures of the year?

A. It was.

Q. You played that picture for three weeks altogether, [1760] didn't you?

A. Yes, sir.

Q. And the first week you grossed \$3718?

A. Yes.

Q. Is that right?

A. \$3718.

Q. And the second week you grossed \$3014?

A. Correct.

Q. Now, because I have to make a comparison of two weeks, I don't mind the other information coming in, but I would like to keep this at a two-week period. Your total then for two weeks was \$6730 for your first two weeks, and your film rental for your first two weeks was \$2392, was it not?

A. The first feature, yes, for Born Yesterday.

Q. That is what I am talking about.

Mr. Corinblit: What is your figure, Mr. Mitchell?

Mr. Mitchell: \$2392.

Mr. Corinblit: Right.

Mr. Mitchell: Now, I would like to read into

(Testimony of Alex Schreiber.)

evidence what these other theatres did with this same picture.

Q. You played that day and date with the Southside, La Tijera and Imperial, is that right?

Mr. Corinblit: We will stipulate to that fact.

Mr. Mitchell: That is correct. [1761]

The Witness: Yes.

Mr. Corinblit: I do have that information. That was true for those two weeks.

Mr. Mitchell: That is my understanding. And do you have the Southside cut-off card on that, Mr. Westbrook?

We will take the La Tijera while we work out the other problem.

Q. Reading from Joint Plaintiff and Defendants' Exhibit F-3, it shows the gross at the La Tijera on this picture for two weeks was \$6079, paying a film rental of \$2059.

From the same exhibit it shows that the Imperial Theatre for two weeks grossed \$4320, and paid a film rental of \$1488.

Mr. Mitchell: Do you have some more crayon?

The Court: Mr. Mitchell, I have a dark pencil here if you wish to use it.

Mr. Mitchell: We have some here. I think we have to use a little heavier pencil than that, otherwise it doesn't show up.

We will have a Christmas celebration here. How the devil do you work this thing? We will go to green now.

Q. Now, do you have the Southside—this is ex-

(Testimony of Alex Schreiber.)

hibit what? The same exhibit shows that the gross at the Southside for the first week was \$4675 and for the second week was [1762] \$2385, or a total of \$7060, and a total film rental from the Southside first week, \$1683, and the second week \$747 or \$2440.

Now, Mr. Schreiber, do you recognize that what you have done here playing this in four theatres day and date at an average of around what—\$3300 or \$3400 in your theatre and \$3500 a week in the Southside and a little less than the other two, is that you cut up the patronage of the area so none of the theatres does very well. Isn't that true?

Mr. Corinblit: Objected to that as being purely argumentative.

The Court: Sustained.

At this time we will take another recess, ladies and gentlemen of the jury, and again it is my duty to admonish you not to discuss this case with anyone nor permit anyone to discuss it with you. You are not to express or formulate any opinion as to the rights of the parties until the case has been finally submitted to you.

With that admonition, we will now recess until 3:20 o'clock.

(Short recess.) [1763]

The Court: Stipulate the jury is present and in the box?

Mr. Mitchell: Yes, your Honor.

Mr. Corinblit: So stipulated.

The Court: You may proceed.

Mr. Mitchell: I would like, also, for purposes of

(Testimony of Alex Schreiber.)

comparison, your Honor, to read into the record the gross of King Solomon's Mine, a Loew's picture, which played on a 7 day run exclusively in the Fifth Avenue Theatre.

Q. King Solomon's Mine, Mr. Schreiber, was also a very good picture, wasn't it?

A. I would say it was a bigger Picture than Sunset Boulevard or Born Yesterday.

Q. All right.

A. Or at least as good, if not bigger.

Mr. Mitchell: Can you give me from the situation reports there of the Fifth Avenue Theatre the gross for the first two weeks, and then we will get the whole four weeks.

Mr. Westbrook: The gross of the first two weeks exhibition at the Fifth Avenue Theatre was \$11,725.

Mr. Mitchell: And it played a total of four weeks, and what is the total four weeks gross?

Mr. Westbrook: The total four weeks gross was \$16,000 in round figures. I will give you the exact figure in just a moment. [1764]

Mr. Corinblit: Would you give us the dates, too, counsel?

Mr. Westbrook: Just a moment.

Mr. Mitchell: Do you have the four weeks gross there?

Mr. Westbrook: 16,000.

Mr. Mitchell: Round figures are near enough.

Mr. Westbrook: 16,000 and a few odd dollars.

Mr. Mitchell: Do you have the total film rental?

(Testimony of Alex Schreiber.)

Mr. Westbrook: The total film rental on the picture was \$8,657.

Mr. Mitchell: Say it again.

Mr. Westbrook: \$8,657.

Mr. Mitchell: The record shows that that played all together four weeks in the Fifth Avenue?

Mr. Westbrook: That is correct.

Mr. Corinblit: Before you go ahead, counsel, could we have clear, are these from the situation reports that are marked, or from some document which is not marked? If it is, I would like to have it marked so that it will be available to us.

Mr. Westbrook: They are available to you and we will be glad to show them to you after court.

Mr. Corinblit: Have they been marked for identification? [1765]

Mr. Westbrook: For the moment, I don't know whether these have been marked or not, but they are Loew's records which are available for your inspection.

The Court: Also, will you put on the board the dates when King Solomon's Mine played.

Mr. Mitchell: Yes.

The Court: I think Mr. Corinblit asked for the dates.

Mr. Mitchell: Yes. Have you got that?

Mr. Westbrook: Yes. 12/23/50 to 1/18/51.

The Court: King Solomon's Mine didn't play in the Paradise Theatre at all, did it?

The Witness: Your Honor, it played from December 23 to April 15, four months later.

(Testimony of Alex Schreiber.)

The Court: Four months later. All right.

Mr. Mitchell: This was a single bill on a 7 day availability in the Fifth Avenue.

Now, there is one other figure I omitted to put in here from the Southside cut-off card on Warners. Can you give me on Tea For Two the gross so that we can fill that in on Tea For Two?

Mr. Westbrook: \$2,998.

Mr. Mitchell: Say it again.

Mr. Westbrook: \$2,998.

Mr. Mitchell: And the film rental. [1766]

Mr. Westbrook: \$915.

The Witness: What theatre was that, may I ask?

Mr. Corinblit: Southside.

The Witness: The Southside.

Mr. Corinblit: That was on a double bill. Do we know what the other feature was?

Mr. Westbrook: If you will accept my statement, I can tell you.

Mr. Corinblit: All right, we will accept it, subject to check for correctness. Just the name of the picture is all I want.

Mr. Mitchell: While you are looking for it, I will move along here.

Mr. Westbrook: Tea For Two, at the time that Tea For Two was in the Paradise——

Mr. Corinblit: First week.

Mr. Westbrook: First week, In a Lonely Place, the second feature. It was at the Southside with another Columbia picture, When You Are Smiling. The Southside paid \$150 flat rental for When You

(Testimony of Alex Schreiber.)

Are Smiling, and the Paradise paid \$200 flat rental for In a Lonely Place. They are roughly comparable.

Mr. Corinblit: We don't have to have a comparison. Just the facts, counsel. [1767]

Q. (By Mr. Mitchell): Now, these other 7 day availabilities that you played, and you have it there on your exhibit, Mr. Schreiber, in April, 1951, Vendetta, an RKO picture.

You grossed on that picture about \$2000, and paid a film rental of \$616, isn't that right?

A. That is correct.

Mr. Corinblit: \$2003 that figure is, Mr. Mitchell.

Mr. Mitchell: You want the exact dollars? All right, \$2003 and \$1516 film rental.

Mr. Corinblit: Right.

Mr. Mitchell: I left one out here on May 4th to May 10th. You played Paramount's Samson and Delilah, didn't you? A. That is correct.

The Court: Was that a 7 day availability?

The Witness: Samson and Delilah, yes, your Honor.

I would like to make mention that I believe they called it a 7 day, but if I am not mistaken that had two road show playings prior to the—I believe originally, I am not positive, but I believe originally it came out and played for, oh, maybe four weeks or six weeks or eight weeks, and then it repeated again in the two Paramount theatres, I believe at popular prices the first run, and then the 7 day run. [1768]

(Testimony of Alex Schreiber.)

The Court: But this was the first time it had played in the Westchester area?

The Witness: I believe it was.

Q. (By Mr. Mitchell): That was a Cecil B. DeMille picture? A. Yes, sir.

Q. A topnotch picture as far as the box office was concerned?

A. In some areas it was a top picture, yes.

Q. Vendetta was 7 days, was it not?

A. I believe it was, but I would like to check it. Yes, it was.

Q. And you say Samson And Delilah—you say that that was the first time it played in the Inglewood area. That being true, it would be on a 7 day availability, isn't that right?

A. The first time it played in Westchester, yes.

Q. And on Samson And Delilah you grossed \$2291, is that correct? A. That is correct.

Q. And you paid a film rental of \$751?

A. That is correct.

Q. Santa Fe on May 7th to May 22nd, Mr. Schreiber, a Columbia picture?

A. Yes, sir. [1769]

Q. And you gross was \$1795?

A. That is correct.

Q. And your film rental was \$491?

A. That is correct.

Q. Brave Bulls in June, 1951. That was a Columbia picture? A. That is correct.

Q. And you grossed \$1690? A. Correct.

(Testimony of Alex Schreiber.)

Q. And paid a film rental of \$432?

A. That is correct.

Q. Hurricane Island, a Columbia picture in August, 1951? A. Yes.

Q. And you grossed \$778?

A. That is right. That was only four days.

Q. All right. Four days. I will mark that. And you paid a film rental of \$272?

A. For the four days, yes, sir.

Q. Let us go back just a moment. Santa Fe Brave Bulls and Hurricane Island were all 7 day availabilities, weren't they?

A. Brave Bulls was. Santa Fe on here it is six days, but I believe it was seven.

Q. Seven day availability, I mean. [1770]

A. Yes, yes, sir.

Q. That is what I meant on Brave Bulls, 7 day availability.

A. I thought you asked me——

Q. No, I am sorry. 7 day availability?

A. I believe so.

Q. If you can't find it, it is June 1951.

A. Brave Bulls. 7 day availability, yes.

Q. And Hurricane Island in August 1951 was a 7 day availability?

A. That is correct. That is the picture that played four days.

Q. And Sirocco in August of 1951 was also a 7 day availability? A. That is correct.

Q. And Sirocco grossed \$1850?

(Testimony of Alex Schreiber.)

A. That is correct.

Q. And paid a film rental of how much?

A. \$740.

Q. I think you played two pictures, two Columbia pictures and paid a total film rental of \$740 for both of them, didn't you?

A. They have no film rental alongside of Texas Ranger so I presume that may have been a combination.

Q. Texas Ranger also is a Columbia picture?

A. That is correct.

Q. And your total film rental was \$740?

A. That is correct.

Mr. Corinblit: Mr. Mitchell, you have a question with respect to Samson And Delilah. I think Mr. Westbrook has a point.

Mr. Mitchell: All right.

Mr. Westbrook: The fact is, the picture Samson And Delilah, contrary to Mr. Schreiber's testimony, had previously played a pre-release exhibition in the Inglewood area I believe a year or a year and a half prior to the time that this exhibition came up, but Mr. Schreiber is quite right. It had a regular release and played first run Paramount Downtown and then played the 7 day situations.

The Court: Where did it play?

Mr. Westbrook: I believe in the Academy Theatre. We can verify that fact. It was back in '49 or '50—early part of '50 or the latter part of '49. Is that correct, counsel, as you understand it?

(Testimony of Alex Schreiber.)

Mr. Corinblit: I will accept that statement subject to check. And I would want to get the amount of time it played in the Academy Theatre.

Mr. Mitchell: That certainly is available.

Mr. Corinblit: Fine. Thank you.

Mr. Mitchell: We have a comparison of Santa Fe. [1772]

Q. Did Santa Fe and Samson And Delilah—they played day and date? A. Yes.

Q. Day and date plays at the Century Drive-In as shown by which exhibit?

Mr. Westbrook: Plaintiff and Defendants' Joint Exhibit A-3. The gross receipts for one week play time, which was the same as the Paradise, was \$5667 and the film rental, \$1722.

Mr. Mitchell: Now, Mr. Corinblit, I believe you suggested that some statement of Mr. Schreiber's company showing the expense over the year period be admitted into evidence.

Mr. Corinblit: Yes. [1773]

Mr. Westbrook: Distributors' Exhibit 4.

Mr. Mitchell: I now offer in evidence Joint Distributors' Exhibit No. 4.

Mr. Corinblit: May I see it?

The Court: It may be admitted in evidence.

(The document referred to was received in evidence and marked Joint Distributors' Exhibit No. 4.)

Mr. Corinblit: The document to which I am re-

(Testimony of Alex Schreiber.)

fering is the P and L statement which you have and which is Exhibit 45-P-2 and 45-P-3.

Mr. Westbrook: I assume the tax return will show the same thing.

Mr. Corinblit: There are distinctions based upon accounting matters which the accountant will explain.

I think you will get a better figure and that that figure will be more helpful to you and to the jury.

Mr. Mitchell: I think the reports to Uncle Sam ought to be accurate. If not, we will find out.

Q. (By Mr. Mitchell): Now, this covers the period from the opening of your theatre until July 31, 1951, isn't that right?

(Handing document to the witness.)

The Witness: No.

Q. Well, what period do you say it covers?

A. August 1st to July. [1774]

Q. You didn't start operating until the 23rd of August, did you?

A. That is right, three weeks later.

Q. All right. So your expenses of operation started on the 23rd of August, right?

A. That is the actual operation, but the tax return is three weeks sooner.

Q. All right. But these are operational expenses we are talking about here.

Now, you show on this return expenses of \$128,297. Isn't that right?

Mr. Corinblit: Mr. Mitchell, I will object to the

(Testimony of Alex Schreiber.)

question. No foundation has been laid as to whether this report is kept on an accrual basis or cash basis and what period it covers.

Mr. Mitchell: He told me what period it covers.

Mr. Corinblit: But it has not been determined whether it was on an accrual or cash basis. I didn't want to you use these figures because they are just confusing without an accountant on the stand.

I have the P and L statements that are correct as to the money and I ask you to use them instead of this return.

I will object to the question unless we have a foundation laid. [1775]

The Court: Well, on what basis did you keep the income tax returns? Was it on a fiscal basis or on a regular year basis?

The Witness: This statement is August 1 to July 31. It is not the calendar year.

Mr. Corinblit: I am not talking about that, your Honor. I am talking about the difference between an accrual basis and a cash basis, where there are expenses in the income tax return which are from before for accounting purposes, but are placed in that period by reason of accounting practice as distinguished from a cash basis when you have got the actual expenses.

The Court: Do you understand the objection, Mr. Schreiber, that Mr. Corinblit is making?

(Testimony of Alex Schreiber.)

The Witness: Yes. He said our accountant can explain this better.

The Court: I am asking you if you understand these terms like accrual. Do you know what he is talking about when he says accrual basis?

The Witness: Not too much.

The Court: Do you know how those reports were made?

The Witness: No. I wouldn't want to guess that. That is an accountant's job.

The Court: I think possibly I better sustain the objection. [1776]

Mr. Mitchell: All right.

Mr. Corinblit: We have some P. & L. statements which I would be glad to have you put in and you can use them.

So that they will be in evidence, we will offer to put them in evidence, Exhibits 45-P-2 and 45-P-3.

Mr. Mitchell: All right. It will take just a moment to work out a different set of figures.

The Court: You want those two reports in evidence?

Mr. Mitchell: Yes, please.

Mr. Corinblit: Yes.

The Court: They may be received in evidence.

The Clerk: 45-P-2 and 45-P-3.

(The exhibits referred to were received in evidence and marked as Plaintiff's Exhibits 45-P-2 and 45-P-3.)

Mr. Mitchell: All right. We will try to work with these.

(Testimony of Alex Schreiber.)

Q. Now, your expenses would consist of, as shown here, \$113,900, we will use round figures, and \$11,100. You count the depreciation as part of the expenses in counting your cost of administration being \$2200? I mean the cost of expenses of operation, when you use the \$2,200 figures, it included depreciation, didn't it?

A. I don't know if that was included or not.

Q. You are the man who testified. You included, when you used the figure of \$2,200, you included the depreciation, didn't you?

A. I don't know. I didn't make up the \$2,200 figure, so I don't know if it is included or not. But it is included as an expense item.

Q. Let's include that as an expense item. That is a legitimate expense item, isn't it?

The Court: Mr. Mitchell, what is the period here?

Mr. Mitchell: This is the fiscal year August 1, 1950, to July 31, 1951.

Q. In order to get a comparison with the expense figure, because we took into consideration separately cost of administration, we have got to take that out of here in order to make a comparison. Here is your management and booking there. That is your cost. That is what you call your cost of administration, \$1,850, right?

A. Yes, I believe that is the administration figure.

Q. Also, since in your \$2,200 you didn't have film rental, we will take film rental out. That is \$34,800 is that right?

(Testimony of Alex Schreiber.)

A. Yes, sir. May I ask why you are taking out the \$1,850?

Q. Yes, because we are trying to make a comparison. I will trade places with you. I am willing to explain. [1778] A. All right.

Q. We are trying to make a comparison between the \$2200 with whatever this comes out to be, you see, for the whole fiscal year, and since \$2,200 didn't include either film rental or expense of administration, we have to take them out of this thing. Then we will add back in your actual film rental, and so on, see? A. But that necessarily isn't true.

Mr. Westbrook: Well, we will have apples and apples anyhow.

Mr. Mitchell: We will at least be comparing the same thing.

Q. With those two items out, with film rental and cost of administration out, we have a figure of \$88,500, right? A. Yes, sir.

Q. All right. Now, you were actually only open for three weeks less than this total period, isn't that right? A. That is correct.

Q. So you were really only operating for 49 weeks, isn't that true? A. That is true.

The Court: As far as that report is concerned.

Mr. Mitchell: Yes.

Q. Well, that comes out approximately \$1,800 expense over the whole period of operation as compared with your [1779] \$2,200 in your early months, correct?

(Testimony of Alex Schreiber.)

Mr. Corinblit: That is when you are dividing by 49 instead of 52.

Mr. Mitchell: That's right.

The Witness: That is right.

Mr. Mitchell: I would like to offer in evidence, your Honor, the sheets on which we have recorded this break-even point, and the grosses and **film rentals** and comparisons with other theatres, as shown by testimony of Mr. Schreiber, and the material read from other documents.

Mr. Corinblit: Your Honor, I will object to that on the ground, in the first place, it is nothing but pure argument on the board. But, secondly, that the figures are just terribly distorted. It may be you will want me to go over——

The Court: The witness testified that those are all in the record.

Mr. Corinblit: Yes, sir.

The Court: What difference does it make whether these documents are in or not?

Mr. Corinblit: Then may I be given leave to use these exhibits in order to show the facts?

The Court: Certainly you can use the exhibits.

Mr. Corinblit: All right.

The Court: They may be admitted in evidence.

The Clerk: Joint Distributors' Exhibit S. [1780]

(The exhibit referred to was received in evidence and marked Joint Distributors' Exhibit S.)

Mr. Mitchell: That's all I have, your Honor.

(Testimony of Alex Schreiber.)

The Court: Well, Mr. Mitchell, are you through with your examination of this witness?

Mr. Mitchell: Yes, sir. [1781]

* * * * *

Cross Examination

Q. (By Mr. Johnston): Mr. Schreiber, during the course of your direct examination you mentioned a Mr. Sam Decker. Mr. Decker was a friend of yours from your Detroit days, isn't that correct?

A. That is correct.

Q. Didn't you tell Mr. Decker here in Los Angeles about in the early part of 1949 that you wanted to affiliate the theatre you were going to build in Westchester with the United [1787] Artists Theatres Circuit?

A. Never. Never told him that.

Q. You never at any time told him anything of that character? A. No, sir.

Q. Did you about at this same time, Mr. Schreiber, ask Mr. Decker if he could introduce you to someone in the United Artists Theatres Circuit?

A. No, sir.

Q. You never at any time made any such request of him? A. No, sir.

Q. Isn't it a fact, Mr. Schreiber, that Mr. Decker told you at about this time that he was not well acquainted with the people in the United Artists Theatres Circuit, but that he would talk to his friend Irving Epstein, who might be able to in-

(Testimony of Alex Schreiber.)

introduce you to somebody in the United Artists Theatres Circuit?

A. No, sir. There never was a word like that ever spoken.

Q. Mr. Decker did introduce you to Mr. Irving Epstein, did he not? A. He did.

Now, with respect to your meeting with Mr. Joseph Schenck which you have testified about, Mr. Epstein's interest in that matter was simply as a mutual friend of yours and [1788] Mr. Schenck, isn't that correct?

A. Only insofar as commission was concerned.

Q. You recall, of course, giving your deposition in this case, do you not? A. Yes, sir.

Mr. Johnston: May I have Mr. Schreiber's deposition?

Mr. Corinblit: Yes, sir.

Mr. Johnston: Has it been filed here?

Mr. Corinblit: Right here, counsel. What page?

Mr. Johnston: Volume 1, page 30. May I show this to the witness?

Mr. Corinblit: Certainly.

Q. (By Mr. Johnston): I am going to place your deposition before you and if you will look at it, please, on page 30, line 25, and read through page 31 to line 7.

A. All right.

Q. You so testified on the occasion under oath when your deposition was taken, did you not, Mr. Schreiber?

(Testimony of Alex Schreiber.)

Mr. Corinblit: Is your question whether or not he gave the answers indicated on those pages?

Mr. Johnston: I think my question speaks for itself.

Mr. Corinblit: Your Honor, I object. The question is ambiguous. I don't know whether Mr. Johnston is now going [1789] back to the original question.

The Court: Read the question.

(Question read.)

The Court: Overruled.

The Witness: Yes, these were the questions and my answers.

Mr. Johnston: I would like, if the court's permission is given me, to read the portion indicated, your Honor.

"Q. Did Mr. Epstein in any of these conversations before March 15, 1949, tell you what his interest in the matter was?

"The Witness, Mr. Schreiber: Mr. Epstein's interest?

"Q. Yes.

"The Witness: Strictly as a mutual friend.

"Q. (By Mr. Westbrook): He so stated to you?

"A. That's right. He wasn't looking for any money at all. He was to get no commission."

Q. Now, Mr. Schreiber——

A. Isn't that what I said, Mr. Johnston?

Q. Mr. Schreiber, the record will indicate what

(Testimony of Alex Schreiber.)

you said and it is not up to me to tell you what you have said.

A. It is confusing, because I thought that is what I said, and you just repeated it. [1790]

Q. Is it your testimony now that you deny that Mr. Epstein was acting as a mutual friend?

A. Insofar as commission was concerned, yes. That is what he told me. He didn't want no commission. He was a mutual friend.

Q. Thank you. Now, it was your understanding, was it not, that with respect to this theatre site you had in the Westchester area, that if a deal could be consummated with the United Artists Theatres Circuit that Circuit was to be the purchaser, isn't that right?

A. No, sir. I wasn't told who was going to be in the deal with Mr. Schenck. Mr. Schenck told me at the meeting that United Artists Theatre Circuit would operate it and we were discussing about the minority stockholders and he said that I had nothing to worry about; that they charged a set fee of five or five and a quarter per cent to run it. He told me that I had nothing to worry about. They would run it, but who would have the interest he did not tell me.

Q. Now, Mr. Schreiber, have you completed your statement?

A. However, Mr. Epstein and Mr. Schenck used the word "we" continuously or several times and

(Testimony of Alex Schreiber.)

“we” I took for granted that was Fox and Mr. Schenck.

Q. Your son Max Schreiber was present on the occasion of your meeting with Mr. Joe Schenck, was he not? [1791] A. That is correct.

Q. I am going to show you—perhaps counsel can show you your copy of Mr. Max Schreiber’s deposition. Do you have that, Mr. Corinblit, or do you have the original?

Mr. Corinblit: No, I am sorry I don’t, but go ahead. You can use the copy that you have. I won’t quarrel with that.

Q. (By Mr. Johnston): I am going to show you, Mr. Schreiber, your son Max’s deposition and I am going to ask you to read on page 244, lines 14 through 17. Let me know when you have finished reading it and I will put my question to you.

A. How far down do you want me to read, Mr. Johnston?

Q. To line 17, just that portion which is bracketed. A. All right.

Q. Now, does a reading of that refresh your memory that United Artists Theatre Circuit was to be the purchaser if an agreement could be arrived at? A. No, that was not my understanding.

Q. All right. Then, will you look at your own deposition——

Mr. Johnston: Your Honor, I should like to read the deposition of Mr. Max Schreiber as an admission of an officer of the plaintiff corporation at this time.

(Testimony of Alex Schreiber.)

Mr. Corinblit: Object to that. There is no [1792] foundation laid. This matter is hearsay with respect to this witness.

The Court: I know, but you don't deny that Max Schreiber was an officer of the corporation?

Mr. Corinblit: No, your Honor. But if your Honor would establish this rule we can make use of it as well as they can—that is, when one person is on the stand you may use the deposition of another person because that other person is an officer of a corporation.

The Court: Ordinarily you can't use such a deposition and you can't impeach a witness by such a deposition. The only question, however, is, does that refresh your memory as to what he said.

The Witness: No.

Mr. Corinblit: Mr. Johnston is offering to read a portion of the deposition into evidence and I object to that.

Mr. Johnston: May I read it, your Honor?

The Court: No, I kind of think the objection is good. When Mr. Max Schreiber is on the stand, then you can ask him the question.

Mr. Johnston: Will he be on the stand, Mr. Corinblit?

Mr. Corinblit: Yes, he will be on the stand.

Mr. Johnston: Very well, as part of your case.

Mr. Corinblit: Yes.

Mr. Johnston: All right. [1793]

Q. Mr. Schreiber, look at your own deposition

(Testimony of Alex Schreiber.)

then on page 32 at line 17 and read through page 33 to line 5. A. Starting with what line?

Q. On page 32, starting at line 17.

A. All right.

Mr. Johnston: May I read the portion indicated to the jury, your Honor?

The Court: I don't know.

Mr. Johnston: I have not put my question yet. I beg your pardon.

The Court: All right.

Mr. Johnston: I thought I had.

Q. Now, Mr. Schreiber, isn't it a fact that you knew and you were told that United Artists Theatre Circuit was to be the purchaser if an arrangement could be worked out?

A. That was never told to me and I didn't understand it that way.

Q. Now, I should like to read the portion indicated if I may.

The Court: As impeachment?

Mr. Johnston: Yes, as impeachment, your Honor.

The Court: Very well.

Mr. Johnston: And as an admission of the witness himself. I am reading the portion indicated at page 32, line 17. This is a question by Mr. Westbrook: [1794]

"Q. Now, do you recall anything else that Mr. Irving Epstein told you in the series of meetings that occurred prior to March 15, 1949?

"A. He told me that it looked like, with the separation between the United Artists Theatres

(Testimony of Alex Schreiber.)

and the Fox Theatres, that there were going to be, he thought, some people that would leave the Fox Theatre group of theatres and were going over with Schenck, and that Schenck was going to take a more active part in the United Artists Theatres and they were going to get more theatres. They were going to add more theatres to their group of houses.

“Q. When you refer to they——

“A. United Artists Theatres group were going to add more theatres and they would like to have the Paradise in that group.”

Q. You so testified on the occasion of the taking of your deposition, did you not, Mr. Schreiber?

A. That is right. They were going to take it in a group and they were going to buy and book for the house. That is my answer. [1795]

Q. (By Mr. Johnston): Now, before your meeting with Mr. Schenck that you have testified about, you were attempting to interest other people in the purchase of the Paradise Theatre, isn't that right? A. That is not true.

Q. Had you discussed with any other people the matter of acquisition of an interest in your theatre or theatre site?

A. The Paradise Theatre site?

Q. Yes.

A. Yes, sir, the bowling alley and the theatre, I did.

Q. Who were those people? Were those Detroit people?

(Testimony of Alex Schreiber.)

A. They were mutual friends of mine from Detroit.

Q. Now, after this meeting that you have testified that you had with Mr. Schenck in 1949, you didn't attempt to verify through conversations with MGM people what Mr. Schenck had told you about getting MGM product, did you?

A. No, because Mr. Epstein told me that he wanted me to keep this strictly in confidence, he didn't want me to tell anybody, Mr. Schenck didn't want anybody to know about it.

This was that period of separation. They were going to separate. He didn't want nobody to know about it, that it was something between Mr. Schenck and himself and me—and Mr. Decker knew all about it.

Q. But in any event you didn't go to the Loew's people [1796] and tell them what Mr. Schenck had told you, is that right?

A. You mean go to Mr. Hickey or Mr. Aspell?

Q. Anybody at Loew's.

A. No, I did not.

Q. Now, later on in 1949 you reached a decision yourself to go ahead and build the theatre without any participation by United Artists Theatres Circuit, isn't that right?

A. Or Mr. Schenck, yes, sir.

Q. Or anybody else? A. That's right.

Q. Now, after that, some time after 1949, didn't you engage a Mr. William Toplikar as a real estate

(Testimony of Alex Schreiber.)

agent to try to find a purchaser or purchasers for the theatre for you?

A. There is no truth to that at all.

Q. You never engaged him as your agent to seek buyers for the Paradise Theatre?

A. Positively not.

Q. You never arranged with him to pay him a commission if he found a buyer for the theatre, the Paradise Theatre?

A. He talked about commission when he said he would bring me a buyer, I would have to pay him a commission. That is natural with any broker. You have got to pay him a commission. That is the way they make their living.

Q. Did you agree you would pay him a commission in the event he found you a buyer who was acceptable to you? [1797]

A. Yes, I agreed to pay him a commission prior to him bringing Eddie Zabel from Fox Theatres, Earl Collins from the Picwood Theatre, and Republic Pictures, and Eddie Granger from RKO, and an attorney to my house. He wanted an understanding that he was to receive, I believe he said \$10,000 if he made the deal.

I told him he had nothing to worry about commission, that every broker is entitled to commission, whatever the commission would be on the real estate board, he would be entitled to, and I would pay him, but I wanted to see the principals, who the purchasers were, and that was when he brought Mr.

(Testimony of Alex Schreiber.)

Zabel from Fox West Coast Theatres and the other gentlemen with him at my home.

Q. Did he ever bring any other purchasers to you?

A. No. The first time Mr. Toplikar brought a purchaser to me was at the Paradise Theatre prior to opening, prior to me going to the airport, returning to Detroit. He brought Earl Collins to the Paradise Theatre.

Q. That is the only purchaser, Earl Collins, and the other gentlemen who were with him, the only purchasers he brought to you?

A. Earl Collins was the first man that came to our theatre, because he said he wanted me to see the principal, and then later, as I said, the men came to my house and at one time, I think it was Mr. Toplikar, he brought Phil Isley [1798] to the theatre, to show him the theatre, and Mr. Isley made a recommendation as to what he thought I should do about hanging some curtains in the foyer.

And Mr. Isley was very much interested in our Academy Award board.

I am sure Mr. Toplikar brought Mr. Isley to the theatre.

Q. When you first talked to Mr. Toplikar about the Paradise Theatre, when was that?

A. I think Mr. Toplikar talked to my son and my wife at our home while I was in Detroit, and when I returned from Detroit, he was there at my house waiting for me.

(Testimony of Alex Schreiber.)

Q. And when was that, what month and what year, if you can place it?

A. Well, the group of men were at my home either the end of July or the first of August, and prior to that he brought Mr. Collins to the theatre, as I said before, before I went to Detroit, which would be about—I don't know. It would be about somewhere between the first of the year, I imagine, anywhere between the first of the year and the end of July, the first time I met Mr. Collins.

Q. That would be in 1950, wouldn't it?

A. 1950, that's right.

Q. Now, Mr. Schreiber, as a matter of fact, Mr. Toplikar was acting for you, not only in connection with your [1799] Paradise Theatre site, but with your theatre sites in the Valley, isn't that right?

A. Mr. Toplikar never acted for me. Mr. Toplikar was a broker. He was trying to make some commission, and he did some work, he told me, for Mr. Collins. He was very friendly with Earl Collins of the Picwood Theatre and the Republic Pictures.

Mr. Johnston: May I have Exhibit G-1, Joint Distributors' Exhibit G-1?

Mr. Corinblit: May I see it?

Mr. Johnston: Certainly.

Q. Mr. Schreiber, I am going to show you a document which is addressed to Mr. William Toplikar, dated September 29, 1950, and the name Alex appears, apparently as a signature, and I will ask you if that is your signature.

(Testimony of Alex Schreiber.)

A. That is my signature.

Q. You sent the letter of September 29, 1950, to Mr. William Toplikar, did you not?

A. September 29, 1950, that is correct.

Mr. Johnston: I should like to offer the document in evidence, if I may, your Honor.

The Court: It may be received in evidence.

The Witness: Can I read it?

The Clerk: Joint Distributors' Exhibit G-1.

(The exhibit referred to was received in evidence and marked Joint Distributors' Exhibit G-1.)

The Witness: All right. [1801]

* * * * *

Q. (By Mr. Johnston): Now, Mr. Schreiber, didn't you tell Mr. Toplikar that you didn't want to sell to the Collins group and that you preferred going ahead with Marco Wolff?

A. I did not tell Mr. Toplikar that at all. Mr. Toplikar was at my house when the men were there and I told them I wanted to talk to Marco Wolff the next day and I would give them an answer in less than 48 hours, whether I was going to go ahead with Marco Wolff, let him buy and book the theatre, or whether I would sell to the Ed Zabel and Eddie Granger group.

And in less than 48 hours, I told them I decided to go with Marco Wolff.

Q. You told Mr. Toplikar that, didn't you?

A. Yes, so he could convey it to his people.

(Testimony of Alex Schreiber.)

Mr. Johnston: Thank you. I have no further questions.

The Witness: What about that letter you just read, Mr. Johnston? Don't you want to know a little more about that [1802] letter?

The Court: Mr. Johnston will ask you any questions he wants to ask.

Mr. Johnston: Maybe Mr. Corinblit will ask you questions about it.

The Court: Mr. Corinblit will ask you the questions. [1803]

Redirect Examination

Q. (By Mr. Corinblit): I will place before you, Mr. Schreiber, Exhibit 45-J, which is the play-off of the Paradise Theatre.

Mr. Schreiber, first a few general questions. With respect to the gross receipts that a theatre takes in on a double bill, in the theatre business do you ascribe any box office importance to the—do you ascribe box office importance to only one picture or both pictures?

A. The important thing is always the first picture and the other picture that runs on the same bill or the double bill is what they call a companion picture.

It seems that in the last ten or fifteen years double features around the entire United States have been successful.

It isn't something that the exhibitors wanted. It was something that the public wanted.

(Testimony of Alex Schreiber.)

Q. Now, with respect to the second feature, I take it there is no quarrel that your gross receipts at the box office are going to be better if you have got a big second feature than a small one?

Mr. Mitchell: I object on the ground the question is leading and suggestive. This is redirect. It should be confined to the cross examining questions, and it shouldn't be leading.

The Court: Well, I don't know. This is cross examination. [1804]

Mr. Mitchell: This isn't cross examination. This is his own witness and he should be required to ask proper questions and not lead him—that is, put words in his mouth.

The Court: It is not cross examination in that respect, but evidently he is going to ask some questions on subjects which were raised by the defense.

Mr. Mitchell: There is no question about his right to do that. I just don't think he should put the words in the witness' mouth.

The witness has just said that the important thing was the first feature. Now counsel has twisted that around by his own question in order to compel the witness to state something entirely different. I think the witness should testify on his own and he should not, with his own witness, be permitted to ask leading questions.

The Court: All right. Rephrase your question, Mr. Corinblit.

Mr. Corinblit: All right, your Honor.

Q. Mr. Schreiber, would you describe the com-

(Testimony of Alex Schreiber.)

parative importance, box office-wise, where you have a strong second feature as against having a weak second feature?

A. Well, looking at these titles of the pictures here, if you take a picture like *Tea For Two* and run that double bill with a picture *Sunset Boulevard*, you will do a far greater business than you would if you played *Sunset Boulevard* [1805] with *Pretty Baby* or *Harbor of Missing Men* or *Fireball* or *Wyoming Mail* or *I Will Get By*.

And if one theatre is playing *Sunset Boulevard* and—what did I say the other picture was—*Born Yesterday* on one bill or two of those “A” pictures and the other theatre is playing *Harbor of Missing Men* and *Fireball*, the one theatre could practically put out a sign, “Gone on vacation.”

Q. Now, would you also describe in the theatre business the impact on the theatre’s operation where one picture is played—a theatre that has an availability of 7 days and the second feature has an availability of 21 days, what effect does that have on the box office?

A. Just common sense will tell you that. If a person wants to go and see a picture and they want to see—well, I will use the title here *Sunset Boulevard* and *Sunset Boulevard* is playing, say, for instance, a 21 day *Harbor of Missing Men* at the *Paradise* and *Sunset Boulevard* would be playing three or four miles further away at another theatre playing with an “A” picture like *Kiss Tomorrow Goodbye* or *Tea For Two*, they are going to go

(Testimony of Alex Schreiber.)

where the better program is. They wouldn't go back to the theatre that is playing the 21-day picture because they may have seen that 21-day picture at one of the other theatres. So they are not going to go into the Paradise and sit through a 21 day [1806] picture that they had already seen in order to see the other picture. That is clear because they can go to another theatre where they are playing two top "A" pictures and they hadn't seen either one.

Q. All right. Now, that is two factors. Now, will you describe with respect to the third factor, what effect on the box office gross is recognized in the motion picture business in the following situation. In week No. 1 you play picture A and picture B. The second week you carry over picture A as the second feature and bring in a new feature as the top half of the bill. In other words, the second time on the second week the bill has a picture, one of the two which has already played the week before. Would you describe to the jury what box office impact that kind of practice has?

A. I would say—I know a lot of these questions—if you played a picture A and picture B the first week and you gross \$1500 or \$2000 or \$2500 that week, now, the next week you come back with what is supposed to be a new program—you have a new picture, not an "A" picture. It may be a new picture but that picture may be a "C" or a "D" that we were able to get, and you told over the picture that was the "A" picture the first week to the second

(Testimony of Alex Schreiber.)

week, well, you are immediately eliminating the \$1500 or the \$2000 or the \$2500 that had been in the previous week. They are not [1807] going to come and pay you another sixty or seventy or eighty cents or a dollar admission to come back the next week and see one of the two pictures that they had paid sixty cents or seventy cents or eighty cents or a dollar to see the week before. They are not going to come back. If they do have the time and want to take the children out to the movie or the husband and wife want to go to the movie or the boyfriend and girlfriend want to go to the movie, they are not going back to the theatre where they had been the week before to see the one picture where they can drive elsewhere and see two pictures they hadn't seen before.

Q. Now, finally, Mr. Schreiber, in comparing theatre grosses, if you compare theatre grosses, one theatre with a second theatre and the second theatre has a give away in the Inglewood-Westchester area, what effect on box office did the practice of having give aways have during that period? Incidentally, the Paradise didn't have give aways, is that right?

A. No, sir. [1808]

Q. What is the effect of give-aways?

A. When we first came here and we made this buying and booking arrangement with Marco Wolff, Marco Wolff had at that time, I think, six theatres, might have been eight. I don't remember exactly.

Being curious, when I noticed the advertising in this theatre lobby, because he took me around, he

(Testimony of Alex Schreiber.)

or his brother Roy took me around to the various theatres that they owned, wanted me to see the theatres, and I noticed in the theatre big advertisements, we call them 40 x 60 boards, that is almost the size of this map here, 40 x 60 advertising, and you have frames in the theatre lobby. I noticed he had advertising about cash give-away, come every Wednesday or Thursday or Tuesday, whatever night it was. Some theaters had it twice a week. Win the jackpot or win the keno prize or the bingo prize, or win a cash prize of \$1800, or \$2500 or a thousand.

Each week there was no winner—it was one of those games where you pick out the fifth number and if your name was the fifth number, you win the jackpot, and they have a telephone service going to all their theatres, they have the telephone line open, and they call the name of the party and if the party isn't around, the next week they add \$50 to the prize. If it was \$1100 and nobody answered the name, the next Tuesday or the next Thursday, whatever day it would be, [1809] it would be \$1,150, and if nobody came in the next week, then it would be \$1200.

That thing spread all over town, when I came here, and on the nights that happened, it packs the theatre to capacity. That is why the theatres wouldn't give it up.

When Marco Wolff asked me if I wanted to put the Paradise Theatre in with his group in this cash night, and I would pay my proportionate share of what they gave out each week, and I could join

(Testimony of Alex Schreiber.)

with his theatres in that way, I told him I didn't go in the theatre business, or words to that effect, and build a \$450,000 theatre to give money away. The theatre was too beautiful for that. We wanted pictures, and I am sure with pictures the public would come to see the pictures and never mind the cash.

That was the same period that the Skouras theatres, Fox West Coast, were giving away every Wednesday, they would have a group of maybe 15 or 20 theatres in this end of town, and they would give away a Chevrolet car one week, and maybe the next one they would give away a Hudson car, and maybe the next month they would give away a Ford, and alternated it between the weeks or months, if they didn't give an automobile away, they would give a thousand dollars in cash.

They had 25 theatres that participated in that one automobile over here.

Then over here they used maybe 15 theatres, and [1810] among those 15 theatres they would give away an automobile or cash.

Then over here they would use maybe 10 theatres, according to the size of the theatres and how they would allocate the costs, and give away a car or cash.

So on Wednesday night, you go to practically any Fox West Coast theatre, I am almost positive it was on a Wednesday night, and you had a chance to win an automobile.

If you didn't win an automobile, it would be car-

(Testimony of Alex Schreiber.)

ried over, and they would add more cash to it the next week.

They were being investigated because of the lottery, and they tried to show that this give-away was a lottery and to stop it——

Mr. Johnston: I move to strike the comment of the witness as being a conclusion and not a statement of fact.

The Court: It may go out.

I would like to ask, Mr. Corinblit, a question.

Mr. Corinblit: Yes, sir.

The Court: Assuming there was a give-away policy, is that any indication of any conspiracy of any kind?

Mr. Corinblit: No, sir. That is only a foundation question.

The Court: What difference does it make?

Mr. Corinblit: There is only one reason. When Mr. Mitchell, and we are going to go into each picture, when [1811] Mr. Mitchell put on this chart these pictures and made comparisons between the Paradise Theatre and, for example, the Rio Theatre and the Paradise, or the Southside and the Paradise, the Fifth Avenue and the Paradise, in order to give the impression that the Paradise on the pictures wouldn't compare in grosses, Mr. Mitchell did not tell the jury that one of the days involved in every picture involved a cash give-away, or a give-away. He didn't tell the jury that the first feature at the Paradise was the second feature at the other theatre. He didn't tell the jury that

(Testimony of Alex Schreiber.)

we were playing a second feature with 21 days availability and the other theatre was playing two top bills.

That is the point of this question, your Honor. It has nothing to do with conspiracy. It has to do with the exhibit that Mr. Mitchell put in evidence.

The Court: The Paradise Theatre could have introduced a give-away, give away money or even given away the theatre.

Mr. Corinblit: That is correct, but that is not the point. This is redirect examination only devoted to a very narrow point here, and that is this exhibit Mr. Mitchell prepared last Friday without completing the information that is material. I think we can move through it quite quickly, your Honor.

Mr. Mitchell: It doesn't have anything to do with [1812] it. It shows certain theatres can do better and did better than the Paradise. If they can do it by skillful showmanship, they can do better, they can return more money to the distributor. All I was showing is that by skillful showmanship, whether it be by give-aways, buying better pictures, or what-not, that these other theatres can do better than this one.

Mr. Corinblit: Your Honor, I think in all fairness we are entitled to put this matter in. I think we are entitled to go into it.

The Court: You can proceed.

Mr. Corinblit: Yes, sir.

The Court: I wanted to know just where the

(Testimony of Alex Schreiber.)

give-away angle came in on this conspiracy charge.

Mr. Corinblit: Yes, sir.

Q. The first picture Mr. Mitchell used was Pretty Baby and Harbor of Missing Men. I hope the jury will pardon my handwriting. Pretty Baby was on what availability, Mr. Schreiber, from the exhibit? A. 7 days.

Q. What availability was the Harbor of Missing Men?

A. It is marked here 21 days, but it played——

Q. I will underscore the 21 days, that being something not present on Joint Distributors' Exhibit F.

The second picture Mr. Mitchell used was Desert Hawk and Pretty Baby. This was one of those situations you described [1813] earlier, was it, Mr. Schreiber, in which the first feature from the prior week was carried over as the second feature the following week, isn't that right?

A. That is correct.

Q. All right. This is a carry-over——

The Court: Was Desert Hawk in your opinion a Grade A picture?

The Witness: A great A picture?

The Court: A Grade A.

The Witness: Oh. I'm sorry. No, I wouldn't say it was a Grade A. I would say it was a B picture. It is according to how many grades you are going to have, A, B, C, D, E, F, or A, B, C, or A, B.

Q. (By Mr. Corinblit): The third group, Mr.

(Testimony of Alex Schreiber.)

Schreiber, that Mr. Mitchell used was Kiss Tomorrow Goodbye and a picture, Triple Trouble.

Then Mr. Mitchell compared gross receipts, but before we do that—well, yes, let's put that down. The Rio, he said, had the same bill.

Mr. Corinblit: Will you get me the tear sheets?

Mr. Westbrook: What do you mean by tear sheets, counsel.

Mr. Corinblit: We have the newspaper ads.

On Triple Trouble——

Mr. Westbrook: Is it the same bill? [1814]

Mr. Corinblit: I think it is.

Q. On Triple Trouble, Mr. Schreiber, what does your list show the availability of Triple Trouble was? A. 21 days.

Mr. Westbrook: 21 days at both theatres.

Mr. Corinblit: Just a minute. 21 days. Now, will you get the tear sheet, please, for September 13th and September 14th. I'm sorry, the tear sheet for September 7th.

Q. Mr. Schreiber, for September 7th, would you read, please, the entry in the newspaper——

Mr. Mitchell: After all, your Honor, we just can't try a case by newspapers. That is hearsay of the first order.

Mr. Corinblit: Mr. Mitchell, I will ask you to stipulate, after you have looked at the tear sheet in the newspaper, that there was a give-away at the Rio Theatre on September 7, 1950. Will you so stipulate?

Mr. Mitchell: I object to that as being immate-

(Testimony of Alex Schreiber.)

rial, whether there was a give-away or not, your Honor. There is no law against give-aways. We can have give-aways. We can have pretty girls at the box office.

The Court: I know, but you compared the two theatres, and you are trying to show one is worse than the other. I think the other side should have a right to show why it was better in one than the other. Objection overruled as far as materiality is concerned. [1815]

Mr. Corinblit: Will you examine this, Mr. Mitchell, and see if you can stipulate to this fact and not require us to call a witness.

Mr. Johnston: Aren't you going to call the witness, anyway?

Mr. Westbrook: I don't understand this. It is a one-line advertisement. I don't understand what it means and I don't think Mr. Mitchell does, either.

Q. (By Mr. Corinblit): Mr. Schreiber, in the business where there is an advertisement using the word "Play," p-l-a-y, what does that word mean in the business?

A. It can mean they are going to play bingo, they are going to play keno, or have a cash night, give away an automobile, or other terms they use in addition to that, "Come Early," because the newspapers wouldn't accept, because of interstate commerce, or this lottery law, they wouldn't let you put cash give-away in the papers.

They also used to use the term Latest Newsreels, and people would know if they saw the ad like that,

(Testimony of Alex Schreiber.)

Newsreel or Play or Come Early, that that was a subterfuge—is that the word—they would use for give-away. [1816]

The Court: I don't know about that. We have 14 people on the jury and I suppose every one of these 14 people are old enough to have gone to a motion picture theatre in 1949, '50 and '51. We have 14 people who are from all parts of the city and who live under all circumstances, but I doubt very much if any one of them has ever had this experience—ever had the experience of reading something in a newspaper that would indicate what is going on. It is purely speculative as far as this witness is concerned as to what that means.

Mr. Corinblit: No, no, your Honor. The word “play” in the theatre business has a specific meaning.

The Court: He has gone further than “play.” He didn't limit his explanation to the word “play.”

Any of us can look up Mr. Webster who can tell us what the word “play” means.

Mr. Corinblit: Beyond his description of the word “play” it is true——

The Court: What he is saying is that when they see something in a newspaper it means so and so.

Mr. Corinblit: If the word in the business and in their advertisements has a common accepted meaning that is something else. It is like asking what the word “clearance” means.

The Court: He is testifying as an exhibitor as to what [1817] the word means to the viewers. He is

(Testimony of Alex Schreiber.)

not a viewer. He can't testify as to what the viewers understood by the meaning of a certain word.

Mr. Corinblit: Your Honor, your point is well taken and I will confine the question.

Q. Mr. Schreiber, I want you to answer these questions only in the terms of what an exhibitor means—what his understanding of that term is with respect to exhibitors.

Mr. Corinblit: Now, Mr. Mitchell, could we stipulate that the word "play" appears herein so we can put it in the record, or do we have to get a witness or the people who put this in and have them come to the jury and testify, because there is no quarrel about this practically, really—I don't think there is.

Mr. Mitchell: I never heard of it before, to tell you the truth. I had not the faintest idea of any such thing.

I supposed the pictures played and the people could do various things to attract customers. I haven't the faintest idea of it. I never heard of it before. I never saw an ad use the word "play" and I don't know what it means and I am not prepared to stipulate until I know more about it.

Mr. Corinblit: All right. I don't think I need to go any farther on that one.

Q. Now, the next picture Mr. Mitchell used was the picture *In A Lonely Place* and *Kiss Tomorrow Goodbye*. Now, [1818] with respect to the picture *Kiss Tomorrow Goodbye*, that was one of these

(Testimony of Alex Schreiber.)

holdovers that you described before, isn't that right, Mr. Schreiber?

A. Yes. That is from the week before that you had down there.

Q. Now, in addition to that fact, Mr. Mitchell also compared the following—made the following comparison. He compared the gross of the Paradise, which was \$2125 with the Southside which was stated to be \$4255 and he made another comparison which we will come to in a minute.

Now, with respect to the comparison to the Southside——

Mr. Corinblit: Mr. Westbrook, if you have the play-off, will you stipulate with me the following facts: That the picture *In A Lonely Place* played the first two days, Wednesday and Thursday, with the Fox picture *Broken Arrow* which was a percentage picture, and played for the last five days with the Fox picture *Black Rose* which was the top half of the bill. Will you stipulate to that?

Mr. Mitchell: With the rest of the facts. The first one was *Broken Arrow*.

Mr. Corinblit: Yes.

Mr. Mitchell: That was a holdover.

Mr. Corinblit: For two days, that is right.

Mr. Mitchell: So you didn't give quite all the facts. Now, let us get the rest of them. [1819]

The other picture was a percentage picture but the top rental was paid by *In A Lonely Place*.

Mr. Corinblit: That was for two days, and for

(Testimony of Alex Schreiber.)

five days you played the picture *Black Rose* and the picture *Kiss Tomorrow Goodbye*.

Mr. Mitchell: Didn't you also have, while we are getting down into all this minutia, didn't the *Paradise* also have a major studio prevue during that week?

Mr. Corinblit: I don't know, but I will be glad to check that fact for you.

Mr. Mitchell: We don't either of us have all the details apparently.

Q. (By Mr. Corinblit): Now, the tear sheet for the date September 15——

Mr. Mitchell: Now, your Honor, I object to the use of newspapers to try the case on the ground it is hearsay and presenting it before the jury is an improper use of hearsay. I object on that ground.
* * * * * [1820]

Mr. Mitchell: Your Honor, you asked for some figures. Using the cut-off cards that are marked for identification, I will give you company by company and then give you the total.

In the 1949-50 season, this was the number of pictures distributed:

Paramount, 25; Warners, 32; Loew's, 30; Universal, 36; RKO, 42; Columbia, 48; United Artists, 29; Twentieth Century-Fox, 33 making a total of 275.

In the 1950-51 season, Paramount, 26; Warners, 30; Loew's, 26; Universal, 32; RKO, 28; Columbia, 36; United Artists, 31; Twentieth Century-Fox, 42; a total of 251.

(Testimony of Alex Schreiber.)

In addition to those pictures, of course, you recognize that there was Republic, Eagle-Lion, Monogram, Allied Artists, and so on.

You also recognize with respect to some of these pictures, like RKO and Columbia, a lot of those are westerns that are really not suitable for the top half of a double bill.

Mr. Corinblit: Your Honor, with respect to the [1827] figures Mr. Mitchell mentioned, we will stipulate to those figures, subject to correction by both sides. Is that agreeable, counsel?

Mr. Mitchell: That is agreeable.

Mr. Corinblit: And Mr. Johnston?

Mr. Johnston: Yes.

Mr. Corinblit: Thank you.

It has been called to my attention that there is an error in the name of the picture that was played here. I think we ought to check this just a moment. This feature played here was *In A Lonely Place*, and that is the feature which was the top feature at the Paradise Theatre was played together with *Broken Arrow*, *Black Rose*. *Black Rose* was the percentage picture on the Southside bill.

The Witness: That is pretty small, Mr. Corinblit. I can't see it from here.

Mr. Corinblit: Mr. Mitchell also made a comparison with the Fifth Avenue Theatre. He pointed out the gross was \$1,892 a week later.

Now, on that, may I have the October 4th tear sheet? Having in mind Mr. Schreiber's statement, Mr. Mitchell, I wonder if you will stipulate to the

(Testimony of Alex Schreiber.)

language contained in here, "Come Early" in the Fifth Avenue for this date.

Mr. Mitchell: That isn't the date the picture [1828] played.

Mr. Corinblit: But the comparison you made, Mr. Mitchell, is for the week following.

Mr. Westbrook: It played in the Fifth Avenue one week—excuse me.

Mr. Mitchell: Our records show that the Fifth Avenue in the week following it played the same double bill as had played at the Paradise Theatre.

Mr. Corinblit: Yes.

Mr. Mitchell: In *A Lonely Place* and *Kiss Tomorrow Goodbye*.

Mr. Corinblit: That is right here.

Mr. Mitchell: And a week later would be—what is the date of the week later? September 19th to September 26th. Now, you have given me a newspaper of October 4, which hasn't anything to do with it, which only illustrates the lack of virtue of trying a case by newspaper.

Mr. Corinblit: I will check this.

All right.

Now, the next picture that Mr. Mitchell used was *Tea For Two* and *In A Lonely Place*, and at the Paradise compared it with the Southside gross for that week of \$4,255.

Will you stipulate with me, counsel—oh, that is not correct. *Tea For Two* grossed at the Paradise \$1,585, and he compared it with a gross of \$2,998 at the Southside. [1829]

(Testimony of Alex Schreiber.)

The bill at the Southside for that week, counsel, I think you will stipulate with me, was Tea For Two and Black Rose.

Mr. Mitchell: Black Rose was a hold-over.

Mr. Corinblit: For two days.

Mr. Mitchell: For two days.

Mr. Corinblit: And then a new picture, When You're Smiling.

Mr. Mitchell: When You're Smiling was a Columbia flat rental picture.

Mr. Corinblit: Right.

Mr. Mitchell: For which \$150 was paid.

Mr. Corinblit: Yes. When You're Smiling for five days and Black Rose, a Fox picture, for two days, and Tea For Two 7 days.

Now, In A Lonely Place, when it played with Tea For Two was a hold-over, wasn't it?

Mr. Mitchell: That was a hold-over, but that was a first-class picture and the other was a second grade picture, obviously.

Mr. Corinblit: I am just adding the facts that were not placed on here.

Mr. Mitchell: Sure. There are a lot of facts we could talk about. [1830]

Mr. Corinblit: The next picture that Mr. Mitchell used was Convicted and Petty Girl, and that was a comparison—this is the week I was looking for.

Convicted and Petty Girl was available—does your record show the picture Convicted and Petty Girl played at the Paradise?

(Testimony of Alex Schreiber.)

The Witness: 14 days.

Q. (By Mr. Corinblit): Which one, both of them? A. Both of them.

Q. These are both 14 day pictures? A. Yes.

Mr. Corinblit: Mr. Mitchell compared it with the gross at the Fifth Avenue, compared the grosses. The Paradise he compared a gross of \$1327 with a Fifth Avenue gross of \$2317. Now, may I have the October 4th——

Mr. Mitchell: The same double bill at the Fifth Avenue as played at the Paradise.

Mr. Corinblit: Yes.

The Court: Both on 14 day availability?

Mr. Corinblit: Yes.

The Court: In both theatres?

Mr. Corinblit: In the Fifth Avenue and the Paradise, that is correct. There is only one difference, and the difference is "Come early on Friday night."

Now, will you stipulate to that, Mr. Mitchell, "Come [1831] early to the Fifth Avenue Friday night" and not the Paradise?

Mr. Mitchell: Just a minute. If we are going into detail here, let us get the correct detail.

Mr. Corinblit: I think Mr. Mitchell did point out—no, I don't think he did——

Mr. Mitchell: This is just argument that he is now giving, your Honor.

Mr. Corinblit: There is one other fact I think we ought to have here. Would you give me the number of days at the Paradise? How many days

(Testimony of Alex Schreiber.)

did Convicted and Petty Girl play at the Paradise?

Mr. Mitchell: One thing at a time.

The Witness: 29th to the 4th.

Mr. Corinblit: How many days is that? Six days?

The Witness: Six days.

Mr. Corinblit: This gross is six days. Now, this is a Columbia picture at the Fifth Avenue—while they are checking that, I will get out another record. While this matter is being checked, there is one matter I think we can agree to.

Mr. Mitchell: I can't do but one thing at a time, I assure you of that, and not that very well.

Your Honor, subject to my objection to the use of newspapers, which I think is improper and is incompetent and hearsay, but for the sake of moving the thing along, there is [1832] an advertisement in the Examiner for October 4, 1950, a little one-fourth inch ad for the Fifth Avenue which says among other things, "Come early."

Mr. Corinblit: In addition to the "Come early," the Fifth Avenue gross that Mr. Mitchell put into evidence is for seven days, a full week. Let me check that to make sure. Seven days, and I am counting on my fingers, while Paradise gross compared with it is only six days.

Mr. Mitchell: That is correct.

Mr. Corinblit: Now, the next comparison made by Mr. Mitchell is the picture Sunset Boulevard and Saddle Tramp. The gross was \$3849.

Now, Mr. Mitchell made a comparison with the

(Testimony of Alex Schreiber.)

Southside. Now, I will take the—you will stipulate with me, counsel, that the bill at the Paradise for that week, Sunset Boulevard and Saddle Tramp, at the Southside Sunset Boulevard and My Blue Heaven, which was a Fox picture.

Mr. Mitchell: That is correct. And the flat rental for Saddle Tramp was \$500 and for My Blue Heaven was \$536.

Mr. Corinblit: But My Blue Heaven he bought on percentage and then converted it—35 per cent and converted it. It was bought on a percentage basis originally.

Mr. Mitchell: They paid a percentage on Sunset Boulevard but not on both.

Mr. Corinblit: Let us put the names of the pictures [1833] down. At least there is no argument about that.

Q. You remember the Twentieth Century-Fox picture My Blue Heaven, Mr. Schreiber?

A. I sure do.

Q. What was the box office quality of My Blue Heaven? A. Triple A.

Q. All right. A. And percentage.

Q. Sold percentage? A. Yes, sir.

Mr. Mitchell: Now, I want it established here that it paid \$536 flat rental.

Mr. Corinblit: Yes.

Mr. Mitchell: That is right.

Mr. Corinblit: Yes, sold percentage and paid a flat rental.

Q. Now, with respect to Saddle Tramp. The

(Testimony of Alex Schreiber.)

picture Saddle Tramp—what availability does your record show, Mr. Schreiber? A. 14 days.

Q. Do you know what availability My Blue Heaven had in the Southside Theatre?

A. I am almost positive it was a 7 day run.

Q. Well, in evidence is the schedule showing the Fox play-off in the Loyola Theatre. When did My Blue Heaven close [1834] at the Fox?

Mr. Mitchell: Didn't close at the Fox. It closed at the Loyola. It had already played the Loyola before it played the Southside.

Mr. Corinblit: When did it close in the Loyola?

Mr. Mitchell: October 3rd.

Mr. Corinblit: October 3rd it closed at the Loyola and the date when it opened at the Southside was October 5th, so it really was not 7 days availability—two day availability.

Mr. Mitchell: Two day availability.

The Witness: Two day availability. Practically continuous first run Los Angeles.

Q. (By Mr. Corinblit): Now, the picture Born Yesterday. I think we have all the theatres listed.

I don't think Mr. Mitchell made any more comparisons after that.

The Witness: Is that Vendetta, Mr. Corinblit? That's the first one? I believe it is. It is a little hard to see from here.

Mr. Corinblit: Yes. We are going to go through these now from a different point of view than before.

Q. Mr. Schreiber, what is your testimony with

(Testimony of Alex Schreiber.)

respect to the number of pictures, if you operated on first run, the number of top half pictures and the number of second features that you needed to operate successfully at the Paradise Theatre?

A. On a first run policy?

Q. Yes.

A. I was under the opinion that if we could have got first run pictures at the Paradise Theatre we could have operated very successfully with 35 to 40 pictures maximum of the grade of A, AA, AAA, percentage or B pictures for the top half.

Q. The top half, and then you would be playing double bill ordinarily, and that would require approximately the same amount of second features?

A. That's right. They could be the smaller pictures.

Q. Let's stop right there a moment. That is 35 to 40 top half and 35 to 40 second? [1836]

A. Better write a little bigger, Mr. Corinblit. I can't see that very well.

Q. All right. I am having trouble with this pencil. I think you can do this without even counting, but to make sure, from the defendants first in this case, from the defendant Loew's, how many first run pictures did you get? A. First run Loew's?

Q. During this period.

The Court: For what period?

Mr. Corinblit: August to September 1951.

The Witness: We didn't get any first run from Loew's.

(Testimony of Alex Schreiber.)

Q. (By Mr. Corinblit): From the distributor Twentieth Century-Fox, how many did you get?

A. Same number, none.

The Court: When you say first run, do you mean first run Los Angeles or first run Inglewood?

Mr. Corinblit: I am sorry, your Honor. With respect to first run Los Angeles.

The Court: They never got any pictures first run Los Angeles.

Mr. Corinblit: That's right, your Honor.

The Court: In fact, the testimony is they didn't get any pictures first run Los Angeles.

Mr. Corinblit: That's right, your Honor. [1837]

The Court: What are you putting it down for?

Mr. Corinblit: Mr. Mitchell put down a list of facts and no argument about it in the record, and it seemed to me we ought to have it down here.

Mr. Mitchell: Just put a big zero. That will cover it.

Mr. Corinblit: All right. All defendants zero. Fine.

Q. Now, turning for a minute to 7 day pictures, I think you testified you would need 35 to 40 top half and 35 to 40 second features.

The Court: He said if he had first run pictures Los Angeles. Now, do you mean to say on the 7 day availability you would need the same number of pictures or you would need more?

The Witness: Ordinarily you would need more, but we would have been tickled to get 35 to 40 seven day pictures, and we would have been successful.

(Testimony of Alex Schreiber.)

Q. (By Mr. Corinblit): Now, turning to the matter of top half pictures, Mr. Schreiber, I am now just talking about pictures that you played at the top half, without regard to whether they were suitable for the top half, but pictures you played at the top half, how many during the period August 23, 1950, to September 1951, did you get from Loew's?

Mr. Mitchell: Just a minute, your Honor. I think [1838] that is immaterial since he played a 21 day policy from at least January 1, 1951, to the end of March, didn't even try to get 7 day pictures during that period.

Mr. Corinblit: Now, that is Mr. Mitchell's testimony, your Honor.

The Court: Objection overruled. You can argue that to the jury when the time comes. I think he is entitled to testify how many top half pictures he played.

Q. (By Mr. Corinblit): On the 7 day availability, Mr. Schreiber, from Metro, how many did you get?

Mr. Mitchell: We will stipulate he did not get any. He wouldn't bid and he didn't get them.

Mr. Corinblit: Stipulation accepted, he didn't get any.

How about Paramount?

Mr. Mitchell: He played Sunset Boulevard and Samson and Delilah.

Mr. Corinblit: Two.

The Witness: Samson was not a 7 day picture.

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